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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1208

**[Docket No. AMS–FV–07–0077; FV–07–705–FR]**

**RIN 0581–AC79**

## Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures

**AGENCY:** Agricultural Marketing Service, Agriculture, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order) is favored by producers of raspberries for processing and importers of processed raspberries. The Proposed Order will be implemented if it is approved by a simple majority of the eligible producers and importers voting in the referendum. These procedures will also be used for any subsequent referendum under the Proposed Order, if it is approved in the initial referendum. The Proposed Order is being published separately in this issue of the **Federal Register.** This proposed program is implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

**DATES:** *Effective Date:* February 9, 2010.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone 202–720–9915 or (888) 720–9917 (toll free) or e-mail *kimberly.coy@usda.gov.*

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order) [7 CFR part 1208]. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Proposed Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) [7 U.S.C. 7411–7425]. It would cover domestic producers of raspberries for processing and importers of processed raspberries of 20,000 pounds or more. A proposed rule and referendum order is published separately in this issue of the **Federal Register.**

*Prior documents:* Proposed rules on both the Proposed Order [74 FR 16266] and the Referendum Procedures [74 FR 16289] were published in the **Federal Register** *on April 9, 2009 with a 60-day comment period.*

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the 1996 Act, a person subject to an order may file a petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law. In the petition, the person may request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

### Final Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Department is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

*Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program:* (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Washington Red Raspberry Commission (WRRC) has recommended that the Department conduct a referendum in which approval of the Proposed Order would be based on a simple majority of the producers and importers voting in the referendum. The Department is conducting a referendum prior to the Proposed Order going into effect.

This rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries will vote on

whether they want a processed raspberry promotion, research, and information program to be implemented. This rule adds a new subpart which establishes procedures to conduct initial and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7.0 million. Under these criteria, the majority of the producers and handlers that would be affected by this Proposed Order would be considered small entities, while most importers would not. Further, qualified organizations certified by the Secretary for nomination purposes, would be expected to generally consist of entities reflecting such sizes also. Producers and importers of less than 20,000 pounds per year of raspberries for processing and processed raspberries respectively would be exempt under this Proposed Order. Five organic producers and importers are also expected to be exempt from assessments. The number of entities assessed under the program would be around 245. Estimated revenue is expected at $1.2 million of which 43 percent is expected from imported product and 57 percent from domestic product.

This rule provides the procedures under which producers of raspberries for processing and importers of processed raspberries will vote on whether they want the Proposed Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that these procedures will apply. There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who will be eligible to vote in the first referendum. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year will be exempt from assessments and not eligible to vote in the referendum.

The Department will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting will be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be $195.00 for all producers or $1.00 per producer and $50.00 for all importers or $1.00 per importer.

The Department considered requiring eligible voters to vote in person at various USDA offices across the country. The Department also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

**Paperwork Reduction Act**

In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was submitted to OMB for approval and approved under OMB Number 0581–NEW.

*Title:* Processed Raspberry Promotion, Research, and Information Order.

*OMB Number:* 0581–NEW.

*Expiration Date of Approval:* 3 years from OMB date of approval.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the 1996 Act, to provide the respondents the type of service they request, and to administer the Proposed Order. The ballot is needed for the referendum that will be held to determine whether producers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible producers and importers voting in a referendum approve of this program. Producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively, are eligible to vote in the referendum and shall be entitled to cast only one ballot in the referendum.

**Referendum Ballot**

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 245.

*Estimated Number of Responses per Respondent:* 1 every 7 years (0.14).

*Estimated Total Annual Burden on Respondents:* 8.58 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be $195.00 for all producers or $1.00 per producer and $50.00 for all importers or $1.00 per importer.

**Background**

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Department received the proposal for a new order from the Washington Red Raspberry Commission (WRRC). On April 9, 2009, the Department published in the **Federal Register** proposals for the Proposed Order [74 FR 16266] and proposed referendum procedures [74 FR 16289]. A second proposal addressing the comments received for the Proposed Order is published in this issue of the **Federal Register.**

The Proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for processed raspberries in the United States. The program would be funded by an assessment levied on producers and importers (to be collected by Customs at time of entry into the United States) at an initial rate of one cent per pound. Producers of raspberries for processing

and importers of processed raspberries of less than 20,000 pounds per year would be exempt from paying assessments. The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the proposed National Raspberry Council; and expenses incurred by the Department in implementing and administering the Proposed Order, including referendum costs.

Section 518 of the 1996 Act requires that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor implementation of the Order. That section also requires the Proposed Order to be approved by a simple majority of the producers and importers voting in the referendum.

This final rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the processed raspberry promotion, research, and information program to be implemented. There are approximately 245 eligible voters.

This action adds a new subpart establishing procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Proposed referendum procedures were published in the **Federal Register** on April 9, 2009. Copies of the proposed rule were made available by USDA and the Office of the Federal Register, and were also available via the Internet at *www.regulations.gov.* The proposed rule provided a 60-day comment period ending on June 8, 2009. No comments were received by the deadline.

It is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the crop year begins on April 1 and it is preferable that this program, if approved in referendum, be in effect before.

**List of Subjects in 7 CFR Part 1208**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Processed Raspberries, Promotion, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended by adding part 1208 to read as follows:

## PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

**Subpart A—[Reserved]**

**Subpart B—Referendum Procedures**

Sec.



**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

### Subpart A—[Reserved]

### Subpart B—Referendum Procedures

#### § 1208.100 General.

Referenda to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor the issuance, amendment, suspension, or termination of the Processed Raspberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

#### § 1208.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible producer* means any person who grows 20,000 pounds or more of raspberries for processing in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

(d) *Eligible importer* means any person importing 20,000 or more pounds of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed as the importer of record for such processed raspberries that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0811.20.20.20, during the representative period. Importation occurs when processed raspberries originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced processed raspberries immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of processed raspberries from Customs when such processed raspberries are entered or withdrawn for consumption in the United States.

(e) *Raspberries* mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus "Rubus" grown in or imported into the United States.

(f) *Processed Raspberries* means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

(g) *Order* means the Processed Raspberry Promotion, Research, and Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a raspberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(k) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

#### § 1208.102 Voting.

(a) Each eligible producer of raspberries for processing and eligible importer of processed raspberries shall be entitled to cast only one ballot in the referendum. However, each producer in

a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process raspberries, in which more than one of the parties is a producer or importer, shall be entitled to cast one ballot in the referendum covering only such producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

**§ 1208.103 Instructions.**

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

**§ 1208.104 Subagents.**

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

**§ 1208.105 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

**§ 1208.106 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1208.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1208.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–NEW.

Dated: January 27, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–2064 Filed 2–5–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM417; Special Conditions No. 25–392–SC]**

## Special Conditions: Model C–27J Airplane; Class E Cargo Compartment Lavatory

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Alenia Model C–27J airplane. This airplane has novel or unusual design features when compared to the state of technology described in the airworthiness standards for transport-category airplanes. These design features include a lavatory in the Class E cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. The FAA has issued additional special conditions for other novel or unusual design features of the C–27J.

**DATES:** *Effective Date:* January 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503, facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 27, 2006, the European Aviation Safety Agency (EASA) forwarded to the FAA an application from Alenia Aeronautica of Torino, Italy, for U.S. type certification of a twin-engine, commercial transport designated as the Model C–27J. The C–27J is a twin-turbopropeller, cargo-transport aircraft with a maximum takeoff weight of 30,500 kilograms.

### Type Certification Basis

Under the provisions of § 21.17 of Title 14, Code of Federal Regulations (14 CFR), and the bilateral agreement between the U.S. and Italy, Alenia Aeronautica must show that the C–27J meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–87.

Alenia also elects to comply with Amendment 25–122, effective September 5, 2007, for 14 CFR 25.1317.

If the Administrator finds that existing airworthiness regulations do not adequately or appropriately address safety standards for the C–27J due to a novel or unusual design feature, the FAA prescribes special conditions under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the C–27J must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions also apply to the other model under § 21.101.

**Novel or Unusual Design Features**

The C–27J incorporates a lavatory into the Class E cargo compartment, which is considered a novel or unusual design feature in a cargo compartment. In developing the airworthiness requirements for cargo compartments, the FAA did not envision that a lavatory would be installed inside a Class E cargo compartment. Lavatories, including the one to be installed in the C–27J, typically contain electrical systems, which could serve as ignition sources for a fire; and an oxygen supply system, which could intensify the growth and size of a fire. Therefore, a means must be provided to disconnect or otherwise remove these two factors, as potentially contributing to a fire, in the event smoke or fire is detected in the cargo compartment and lavatory.

The existing airworthiness regulations do not adequately or appropriately address safety standards for these design features. These special conditions for the C–27J contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Discussion**

Specific regulations governing Class E cargo compartments:

(a) Section 25.855, the material-standards and design considerations for cargo-compartment interiors; the statement that each cargo compartment must meet one of the Class requirements of § 25.857; and the flight testing which must be conducted for certification.

(b) Section 25.857, the standards for the various classes of transport-category airplane-cargo compartments.

(c) Section 25.858, design and certification requirements for cargo- or baggage-compartment fire- or smoke-detection systems, and a standard that fire be detected and indicated to the crew less than one minute after inception.

Specific regulations governing lavatory installations, regardless of location:

(d) Section 25.783, requirements to preclude anyone from becoming trapped inside the lavatory.

(e) Section 25.791, lavatory placarding requirements.

(f) Section 25.853, interior material-test standards, smoking-prohibition requirements, ashtray requirements, and waste-receptacle design-and-material standards.

(g) Section 25.854, lavatory smoke-detector and fire-extinguisher requirements.

In developing the airworthiness requirements for cargo compartments, the FAA did not envision that a lavatory would be installed in a Class E cargo compartment. Therefore, special conditions must be established to ensure that means are available to shut off the electrical system in the lavatory, and the oxygen-supply system in the lavatory, in the event of a smoke-detector alarm in the cargo compartment or lavatory.

**Discussion of Comments**

Notice of proposed special conditions no. 25–09–12–SC for the Alenia Model C–27J airplanes was published in the **Federal Register** on October 23, 2009. No comments were received, and the special conditions are adopted as proposed.

**Applicability**

As discussed above, these special conditions are applicable to the C–27J. Should Alenia apply at a later date for a change to the type certificate to include another model incorporating the same or similar novel or unusual design features, these special conditions apply to that model as well under § 21.101.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Alenia Model C–27J airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

**Conclusion**

This action affects only certain novel or unusual design features of the Alenia C–27J. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

■ Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for the C–27J.

*1. Control of Electrical Power to the Lavatory Located in the Class E Cargo Compartment*

A means must be provided to shut off electrical power to the lavatory should smoke or fire be detected anywhere in the Class E cargo compartment, including in the lavatory. Two types of shut-off systems meet this requirement:

- A manual system, with an airplane flight manual (AFM) procedure to instruct the flight crew on where and how to shut off the power, or
- An automatic system that shuts off power to the lavatory following a lavatory or cargo-compartment smoke-detector alarm.

*2. Control of the Oxygen-Delivery-System Flow to the Lavatory and Cargo Compartment*

A means must be provided to shut off oxygen flow to the lavatory should smoke or fire be detected anywhere in the Class E cargo compartment, including in the lavatory. Two types of shut-off systems meet this requirement:

- A manual system, with an AFM procedure to instruct the flight crew on where and how to shut off the oxygen flow, or
- An automatic system that shuts off oxygen flow to the lavatory following a lavatory or cargo-compartment smoke-detector alarm.

Issued in Renton, Washington, on January 22, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–2680 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2009–0941; Airspace Docket No. 09–ANM–17]**

## Modification of Class E Airspace; Grand Junction, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will modify Class E airspace at Grand Junction Regional, Grand Junction, CO, to accommodate the vectoring of Instrument Flight Rules (IFR) traffic from Grand Junction Regional, Grand Junction, CO to en route airspace, and changes the airport name. This will improve the safety of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On October 29, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Grand Junction, CO (74 FR 55791). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Class E airspace for the Grand Junction, CO, area, adding additional controlled airspace extending upward from 1,200 feet above the surface to accommodate vectoring IFR aircraft departing Grand Junction Regional, Grand Junction, CO, to en route airspace. This action is necessary for the safety and management of IFR operations at the airport. This will also update the airport name from Grand Junction, Walker Field.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Grand Junction Regional, Grand Junction, CO.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CO E5 Grand Junction, CO [Modified]**

Grand Junction Regional, Grand Junction, CO
(Lat. 39°07′21″ N., long. 108°31′36″ W.)
Grand Junction VORTAC
(Lat. 39°03′34″ N., long. 108°47′33″ W.)
Grand Junction Localizer
(Lat. 39°07′04″ N., long. 108°30′48″ W.)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.3 miles northeast of the VORTAC, and within 1.8 miles south and 9.2 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface within a 30.5-miles radius of the Grand Junction VORTAC, within 6.5 miles each side of the Grand Junction VORTAC 099° radial extending from the 30.5-mile radius to 58 miles east of the VORTAC, and within 4.3 miles each side of the Grand Junction VORTAC 166° radial extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within 4.3 miles northeast and 4.9 miles southwest of the Grand Junction ILS localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course and the Grand Junction VORTAC 318° radial.

* * * * *

Issued in Seattle, Washington, on January 29, 2010.

**William M. Buck,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2010–2524 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2009–0885; Airspace Docket No. 09–ASO–17]**

### Revision of Area Navigation (RNAV) Route Q–108; Florida

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, correction.

**SUMMARY:** This action corrects an error in the legal description for RNAV route Q–108 that was published in the **Federal Register** on Friday, December 11, 2009, Airspace Docket No. 09–ASO–17.

**DATES:** Effective date 0901 UTC, February 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**History**

On December 11, 2009, a final rule was published in the **Federal Register** (74 FR 65687), Airspace Docket No. 09–ASO–17. This rule revised Area Navigation (RNAV) Route Q–108 in northern Florida by realigning the route structure. In the legal description, the function of the four points that make up the route as a "waypoint" (WP) or "fix" was inadvertently omitted. This correction adds "WP" to GADAY, IZZEY and FRNKS, and "fix" to HKUNA. Area Navigation Q Routes are published in paragraph 2006 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1.

■ Accordingly, pursuant to the authority delegated to me, the legal description for RNAV Route Q–108, as published in the **Federal Register** December 11, 2009 (74 FR 65687), page 65688, beginning in column 1, is corrected as follows:

**§ 71.1 [Amended]**

* * * * *

**Q–108 GADAY to HKUNA [Corrected]**

■ By adding 'WP' after GADAY, IZZEY, and FRNKS; and adding 'fix' after HKUNA.

Issued in Washington, DC, on January 27, 2010.

**Kelly Neubecker,**

*Acting Manager, Airspace and Rules Group.*

[FR Doc. 2010–2467 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2009–0960; Airspace Docket No. 09–ASO–29]**

### Revocation of Class E Airspace; Hinesville, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the effective date of a final rule that was published in the **Federal Register** on November 25, 2009, Airspace Docket No. 09–ASO–29.

**DATES:** *Effective Date:* 0900 UTC, February 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

**SUPPLEMENTARY INFORMATION:**

**History**

**Federal Register** Docket No. FAA–2009–0960, Airspace Docket No. 09–ASO–29, published on November 25, 2009 (74 FR 61507), revokes Class E airspace at Liberty County Airport, Hinesville, GA. A typographical error was made in the effective date. It should read February 11, 2010, not February 22, 2010. This action corrects that error.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, on page 61508, column 1, line 1, the **DATES** section is corrected to read: *Effective Date:* 0900 UTC, February 11, 2010.

Issued in College Park, Georgia, on January 26, 2010.

**Myron A. Jenkins,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2010–2520 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 9478]**

**RIN 1545–BI86**

### Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains a correction to final and temporary regulations (TD 9478) that were published in the **Federal Register** on Monday, January 4, 2010 (75 FR 48) providing rules relating to the disclosure and use of tax return information by tax return preparers.

**FOR FURTHER INFORMATION CONTACT:** Molly K. Donnelly, (202) 622–4940 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final and temporary regulations (TD 9478) that are the subject of this correction are under section 7216 of the Internal Revenue Code.

**Need for Correction**

As published, the final and temporary regulations (TD 9478) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

■ Accordingly, the final and temporary regulations (TD 9478), that are the subject of FR Doc. E9–31115, are corrected as follows:

■ On page 48, column 2, under the paragraph heading "Background", line 15 from the bottom of the paragraph, the language "are being made following the issuance" is corrected to read "is being made following the issuance".

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2010–2611 Filed 2–5–10; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MOBILE BAY (CG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective February 8, 2010 and is applicable beginning January 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MOBILE BAY (CG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

## PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS MOBILE BAY (CG 53), to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE FIVE

| Vessel | No. | Masthead lights not over all other lights and obstructions. Annex I, Section 2(f) | Forward masthead light not in forward quarter of ship. Annex I, section 3(a) | After masthead light less than ½; ship's length aft of forward masthead light. Annex I, Section 3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| * * | * | * | * | * | * |
| USS MOBILE BAY | CG 53 | | X | X | 36.8 |
| * * | * | * | * | * | * |

* * * * *

Approved: January 28, 2010.

**M. Robb Hyde,**

*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

[FR Doc. 2010–2620 Filed 2–5–10; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

### Security Zone; Escorted Vessels, Charleston, SC, Captain of the Port Zone

*CFR Correction*

In Title 33 of the Code of Federal Regulations, Parts 125 to 199, revised as of July 1, 2009, on page 722, add § 165.769 to read as follows:

**§ 165.769 Security Zone; Escorted Vessels, Charleston, South Carolina, Captain of the Port**

(a) *Definitions.* The following definitions apply to this section:

*COTP* means Captain of the Port Charleston, SC.

*Designated representatives* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

*Escorted vessel* means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast

Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

Coast Guard surface or air asset displaying the Coast Guard insifnia.

State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

*Minimum safe speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(b) *Regulated area.* All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Charleston, South Carolina 33 CFR 3.35–15.

(c) *Security zone.* A 300-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations.* (1) The general regulations for security zones contained in § 165.33 of this part applies to this section.

(2) A vessel may request the permission of the COTP Charleston or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative. No vessel or person may enter the inner 50-yard portion of the security zone closest to the vessel.

(e) *Notice of security zone.* The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Broadcast Notice to Mariners. Coast Guard assets or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia. When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

(f) *Contact information.* The COTP Charleston may be reached via phone at (843) 724–7616. Any on scene Coast Guard or designated representative assets may be reached via VHF-FM channel 16.

[USCG–2007–0115, 73 FR 30562, May 28, 2008]

[FR Doc. 2010–2771 Filed 2–5–10; 8:45 am]

**BILLING CODE 1505–01–D**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

### 37 CFR Part 380

**[Docket No. 2005–1 CRB DTRA]**

### Digital Performance Right in Sound Recordings and Ephemeral Recordings

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges are publishing final regulations governing the statutory minimum fees to be paid by Commercial Webcasters under two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning January 1, 2006, and ending on December 31, 2010.

**DATES:** *Effective Date:* March 10, 2010.

*Applicability Dates:* The regulations apply to the license period January 1, 2006, through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** On May 1, 2007, the Copyright Royalty Judges ("Judges") published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Section 112(e) and 114 of the Copyright Act, title 17 of the United States Code, for the period 2006 through 2010 for a digital public performance of sound recordings by means of eligible nonsubscription transmission or a transmission by a new subscription service. 72 FR 24084. In *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748 (D.C. Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") affirmed the Judges' determination in the main but remanded to the Judges the matter of setting the minimum fee to be paid by both Commercial Webcasters and Noncommercial Webcasters under Sections 112(e) and 114 of the Copyright Act. *Id.* at 762, 767. By order dated October 23, 2009, the Judges established a period commencing November 2, 2009, and concluding on December 2, 2009, for the parties to negotiate and submit a settlement of the minimum fee issue that was the subject of the remand.

On December 2, 2009, SoundExchange, Inc. and the Digital Media Association ("DiMA") submitted a settlement regarding the statutory minimum fee to be paid by Commercial Webcasters. Subsequently, the Judges published for comment the proposed change in the rule necessary to implement that settlement pursuant to the order of remand from the D.C. Circuit. 74 FR 68214 (December 23, 2009). Comments were due to be filed by no later than January 22, 2010. The Judges received one comment from Intercollegiate Broadcasting System, Inc. ("IBS").

IBS requests that the Judges publish a note to proposed § 380.3(b)(2) stating that the Judges on remand will determine the minimum fee for Noncommercial Webcasters. Comments of IBS at 2–3. The Judges decline to do so. As was made clear in the December 23, 2009, Notice, the proposed settlement applies only to Commercial Webcasters. Therefore, the Judges are adopting as final the proposed change as published on December 23, 2009. *See* 74 FR 68214.

**List of Subjects in 37 CFR Part 380**

Copyright, Sound recordings.

**Final Regulations**

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are amending part 380 of title 37 of the Code of Federal Regulations as follows:

## PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

■ 1. The authority citation for part 380 of title 37 of the Code of Federal Regulations as follows:

**Authority:** 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Section 380.3 is amended by revising paragraph (b) to read as follows:

**§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.**

* * * * *

(b) *Minimum fee*—(1) *Commercial Webcasters.* Each Commercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2006–2010 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Commercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Commercial Webcasters, provided that a Commercial Webcaster shall not be required to pay more than $50,000 per calendar year in minimum fees in the aggregate (for 100 or more channels or stations). The minimum fee payable under 17 U.S.C. 112 is deemed to be included within the minimum fee payable under 17 U.S.C. 114. Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any royalty fees payable in the same calendar year.

(2) *Noncommercial Webcasters.* Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the license period during which they are Licensees pursuant to licenses under 17 U.S.C. 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters and is also payable for each individual Side Channel maintained by Broadcasters who are Licensees. The minimum fee payable under 17 U.S.C. 112 is deemed to be included within the minimum fee payable under 17 U.S.C. 114. Upon payment of the minimum fee, the Licensee will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

Dated: February 2, 2010.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2010–2644 Filed 2–5–10; 8:45 am]

**BILLING CODE 1410–72–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 74

**RIN 2900–AM78**

## VA Veteran-Owned Small Business Verification Guidelines

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule with request for comments.

**SUMMARY:** This document affirms as final, with changes, an interim final rule that implements portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006. This law requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses, including service-disabled veteran-owned small businesses. This final rule defines the eligibility requirements for businesses to obtain "verified" status, explains examination procedures, and establishes records retention and review processes. The final rule retains the interim final rule with changes based on the comments received. This document additionally implements new interim final requirements, that eligible owners work full-time in the business for which they have applied for acceptance in the Verification Program, changes the time period for issuance of reconsideration decisions from 30 to 60 days, and changes the distribution of profits for limited liability companies and employee stock ownership plans and solicits comments on these regulatory amendments only.

**DATES:** *Effective Date:* February 8, 2010.

*Comment Date:* Comments on the interim final amendments only must be received on or before March 10, 2010.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to RIN 2900–AM78—"VA Veteran-Owned Small Business Verification Guidelines." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Gail Wegner, Acting Director, Center for Veterans Enterprise (00VE), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, phone (202) 303–3260 x5239.

**SUPPLEMENTARY INFORMATION:**

In an interim final rule published in the **Federal Register** on May 19, 2008 (73 FR 29024), we established new 38 CFR part 74 setting forth a mechanism for verifying ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs). We provided a 60-day comment period which ended on July 18, 2008. We received comments from five commenters. The issues raised in the comments are discussed below. Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule with changes explained below. Due to the nature of the changes and for the convenience of the reader, the regulation text portion of this document restates all of revised part 74.

a. *Eligibility of surviving spouses.* One commenter expressed the opinion that a surviving spouse of a veteran who had any disability rating should be permitted to maintain a VOSB or a SDVOSB for as long as the spouse owns and controls the business.

The rule is consistent with Congress's limitation set forth in 38 U.S.C. 8127(h)(3), which permits the surviving spouse to maintain the status of a VOSB or SDVOSB only if the veteran was rated as 100 percent disabled or the veteran dies as a result of a service-connected disability. VA does not have authority under section 8127 to expand VOSB or SDVOSB status as the commenter suggests. We will not make any changes to the rule based on the comment.

b. *Yearly verification.* One commenter suggested that an annual signed statement by the veteran business owner stating there are no changes in ownership or control should be sufficient to protect the Department's interests. If ownership or control changes, it should be mandated that the business owner report it immediately to

the Center for Veterans Enterprise (CVE), and the CVE may determine it necessary to redo the verification application process entirely. 38 CFR 74.3(e) and 74.21(c)(10) established that a business has up to 60 days after a change of ownership to file a new VA Form 0877, VetBiz VIP Verification Program application. This timeframe was established with sensitivity to the needs of surviving spouses and others who may have significant demands due to health or medical challenges. 38 CFR 74.15 also establishes that eligibility is limited to 1 year. VA has determined that annual examinations are necessary to ensure the integrity of the Verification Program. This is consistent with the annual Federal size recertification requirement in the Central Contractor Registry.

c. Examination visits should concentrate on management and control of operations to establish that a company is truly independent and not a representative of a non-veteran-owned business employing the veteran on a commission or fee basis. Two commenters expressed concern about legitimate parties controlling veteran-owned small businesses. One commenter suggested that examination visits should examine the actual business relationship among the partners, to include: Individuals who control bank account number, terms, lines of credit, sale price of goods and services, contracts for purchase of goods and services, and acceptance of quotations from suppliers. This commenter also recommended reviewing records to establish that the eligible party and not the non-veteran is receiving funds from payments and distributing funds to employees and contractors and to ensure that there is no record of a payment, including a percentage or commission, to the eligible party from a non-veteran. The second commenter recommended that examination visits of pharmaceutical distributors include inspection of Pedigree or E-Pedigree filings, state-issued pharmaceutical licenses, and the product liability insurance policy to ensure that the business name and manager/owner signatures match and that insurance policies are current and have an aggregate value of 5 million dollars. We make no changes to the rule based on this comment. 38 CFR 74.3–4 address examples of ownership and control. 38 CFR 74.20(b) establishes that the scope of examination is not limited to the documents identified in that section. It only establishes that examiners shall review those documents as a minimum and provides the CVE with the flexibility to examine other records. VA has determined for administrative purposes, it is not practical to have specific document review requirements for particular industries. The rule provides VA the discretion to review any pertinent documents necessary to satisfy Verification requirements.

d. *Site visits.* One commenter recommended that the Department conduct an on-site visit at the applicant's place of business for 100 percent of the applications found to be complete. The site visit must include attendance by the veteran owner(s) and executive management team (if applicable). The purpose of the visit would be to substantiate information on the application and to review business operations. Any conflicts would be subject to a second review. The site visit would be mandatory for the initial application and subsequent visits would occur every three years as part of the recertification process, or more frequently at the applicant's discretion. Such initial site visits would be performed within 60 days of receipt of the complete application package. The site visit would be at no cost to the business, and the government would agree that there would not be unscheduled site visits.

In the interim final rule, 38 CFR 74.20(a) provided that the Department reserves the right to conduct random verification examinations of applicants. Also, the interim final rule provided at 38 CFR 74.20(b) that VA could determine to conduct all or part of the verification examination at the applicant's offices. First, VA is revising 38 CFR 74.20(a) to clarify that its intent was that verification examinations, including site visits, may be random and unannounced. Next, in addressing the commenter, conducting 100 percent site visits upon receipt of complete applications is not in the best interests of the Department as many of the businesses that are seeking verification are brand new and have not yet applied for any Federal or VA contracts. Also VA finds that mandatory site visits could be an unnecessary burden to vendors when VA can adequately verify firms through other means, such as document review. The Department will monitor awards to companies in the Verification Program and make decisions on which companies to inspect using a combination of factors, including staffing and funding. VA does not have the resources to conduct 100 percent site visit for all applicant firms in the VIP database. We will not make any changes to the rule based on the comment.

e. Relationship between VA's Verification Program and the government-wide SDVOSB protest process under the Federal Acquisition Regulations (FAR), 48 CFR 19.302 and 19.307. One commenter sought clarification on the relationship between the Department's Verification Program and the protest procedures contained in the FAR. Specifically, a question was submitted regarding the Department's intended action when the Small Business Administration finds a firm ineligible due to a protest decision.

We agree with the commenter that clarification is needed, and § 74.2(e) has been added to include guidance in these cases. Any firm registered in the VA VetBiz VIP database that is found to be ineligible due to an SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database.

f. *Appeals of verification application denial or program cancellation decisions.* One respondent recommended that the Department establish an appeals process for matters limited to the Verification Program. Requests for reconsideration of application denial decisions are addressed in 38 CFR 74.13, "Can an applicant ask CVE to reconsider its initial decision to deny an application?" The language has been revised to add the mailing address for submission of requests for reconsideration. The Director, CVE, shall make the decision on requests for reconsideration of application denials, and 38 CFR 74.13(b) has been revised to reflect that the timeframe for the issuance of a decision has changed from 30 days to 60 days to allow for a thorough consideration of the applicant's request. The decision of the Director, CVE shall be final with no further appeal rights. This document additionally revises the interim final requirement, for the issuance of a decision from 30 days to 60 days, to allow for a more thorough consideration of the applicant's request and solicits comments on this regulatory amendment.

With regard to businesses that are already participants in the Verification program, the rule provides procedures for cancellation of verified status, as described in 38 CFR 74.22. The interim final rule provided that the Director, CVE would issue cancellation decisions. The final rule has been modified such that the Director, CVE issues a Notice of Verified Status Cancellation; however, a participant may appeal this notice to the Executive Director, Office of Small and Disadvantaged Business Utilization. Section 74.22(e) provides that the Executive Director, Office of Small and

Disadvantaged Business Utilization and Center for Veterans Enterprise shall render a decision on such an appeal within 60 days after receipt.

g. *Full-time control:* One commenter suggested that the Department revise 38 CFR 74.4(c)(1) to require the eligible party to work full-time in order to establish control of the firm. The commenter suggested that the original language which requires owners "show sustained and significant time invested in the business" is insufficient to protect the interests of the program and of the Department. The commenter offered alternate language that would "require the veteran to devote the majority of his/her time to managing the concern." This commenter further recommended "permitting the veteran to be engaged in outside employment/management activities only where he/she can show that doing so won't have a significant impact on his/her ability to run the VOSB or SDVOSB."

Based on this comment, we have revised § 74.4(c)(1) to clarify the issue of control of a VOSB and SDVOSB. In lieu of the commenter's suggested language, VA has revised the interim final rule to require an eligible owner have only one business in the program at one time and must work full-time in the business. VA has determined that this revision will ensure the integrity of the program. In addition, VA has defined "full-time" in 38 CFR 74.1. The public is invited to comment on the requirement for full-time work in the business.

h. *Ownership: Profits and distributions.* Two comments were received concerning 38 CFR 74.3. One respondent recommended revising 74.3(a) to adopt language from the Internal Revenue Code, 26 U.S.C. 1563(c)(2)(B), which states that stock in a corporation that is held by an employees' trust described in section 401(a) of the Code will be treated as "excluded stock" if 5 or fewer persons who are individuals, estates, or trusts own 50 percent or more of the total combined voting power of the corporation. Under this proposed language, if 4 individuals own 10 percent each and an Employee Stock Ownership Plan (ESOP) owns 60 percent, the stock held by the ESOP would be treated as excluded stock, and the four individuals would be treated as owning 100 percent of the outstanding stock. In this example, eligible parties would be required to own 51 percent or more of the outstanding stock (excluding the ESOP stock). Conversely, if there were 10 shareholders who own 9 percent each and an ESOP that owns 10 percent, the ESOP stock would be treated as outstanding stock. In this case, eligible parties would be required to own 51 percent of all outstanding stock, including the ESOP stock.

The original text required that veterans own 51 percent of the outstanding stock (including employee stock ownership trusts). VA accepts this comment and has revised 38 CFR 74.3(a). The net effect of this change is that a company that is closely held by veterans would qualify regardless of the size of the ESOP. Alternatively, a firm that is not closely held by veterans will find it much more difficult to qualify for the Verification Program. This commenter noted that there are a number of government programs that are designed to encourage employee ownership as a technique to encourage teamwork, reduce employee turnover, and increase productivity. Adopting this change affects a small number of VOSBs and SDVOSBs that have adopted ESOPs and is consistent with the intent and spirit of public policy objectives.

The second commenter recommended expanding 38 CFR 74.3(d) to state that a veteran's ability to share in the profits of a concern should be commensurate with the extent of his/her ownership interest in that concern. Such revision would also cover limited liability companies (LLC) and partnership structures. For instance, if a VOSB owns 51 percent of an LLC, he/she would be entitled to receive 51 percent of the profits of that LLC.

VA accepts this comment and has revised 38 CFR 74.3(d)(3) to include a partnership or an LLC. Additionally, 38 CFR 74.3(d)(4) has been added to state that an eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern. This document additionally revises the interim final requirement for the evaluation of profits and distributions to determine ownership interest in ESOPs and LLCs and solicits comments on this regulatory amendment.

**Other Non-Substantive Changes to the Final Rule: The Changes Below Serve To Clarify Particular Items From the Interim Final Rule in This Final Rule**

The section headings of §§ 74.1, 74.11, 74.12, 74.15, and 74.21 have been revised to include the word "Program" following verification.

The definition of small business concern has been revised for purpose of consistency to refer to the FAR Part 2 definition of small business.

The definition of surviving spouse has been revised to add "or died as a direct result of a service-connected disability" to be consistent with the statutory definition at 38 U.S.C. 8127(h)(3).

The term "in the line of duty" in the definition of veteran has been changed to "in line of duty" to be consistent with the term of art as used in title 38 of the United States Code.

The options for transmitting decisions on applications and requests for reconsideration have been clarified, as stated in 38 CFR 74.11(g) and 74.13(g), to include mail, commercial carrier, facsimile, or other electronic means.

VA has revised language in 38 CFR 74.14 to clarify the time period for reapplication for admission to the VA VetBiz VIP Verification Program. "Or participant" has been added to address those concerns whose verification status is cancelled.

*Administrative Procedure Act*

Regarding the new interim final amendments published within this final rule at 38 CFR 74.1 and 74.4(c)(1), pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment and with the 30-day delayed effective date. Advance solicitation of comments on the additional interim final provisions would be impracticable and contrary to the public interest, as it could delay VA's examination and verification procedures. VA has good cause to publish the interim final provisions in light of the urgent need to ensure that business concerns are being properly characterized as VOSBs or SDVOSBs, which is accomplished through verification of ownership and control. Immediate implementation of these provisions is consistent with the prior interim final rule and permits VA to continue reviewing basic information necessary to the verification process. This information is necessary even if, as a result of any additional comments received after publication of this notice, VA needs to further revise any of the rules set forth herein. Accordingly, VA has found good cause for the additional interim final provisions to become effective upon publication.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

This final rule would generally be small business neutral as it applies only to applying for verified status in the VetBiz.gov VIP database. The overall impact of the final rule will be of benefit to small businesses owned by veterans

or service-disabled veterans. VA estimates the cost to an individual business to be less than $100.00 for 70–75 percent of the businesses seeking verification, and the average cost to the entire population of veterans seeking to become verified is less than $325.00 on average. A related rule describes the effect that verified businesses will have in the Department's acquisition regulation. This impact is discussed in the proposed rule modifying the VA Acquisition Regulation which was published in the **Federal Register** at 73 FR 49141 on August 20, 2008. On this basis, the Secretary certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under the Executive Order.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). OMB has approved these collections and has assigned control number 2900–0675. VA displays this control number under the applicable sections of the regulations in this final rule. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Catalog of Federal Domestic Assistance**

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

**List of Subjects in 38 CFR Part 74**

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Approved: October 5, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ Accordingly, the interim final rule adding 38 CFR Part 74, which was published in the **Federal Register** at 73 FR 29024, on May 19, 2008, is adopted as a final rule with changes, as follows:

## PART 74—VETERANS SMALL BUSINESS REGULATIONS

**General Guidelines**

Sec.



**Authority:** 38 U.S.C. 501, 513, and as noted in specific sections.

**General Guidelines**

### § 74.1 What definitions are important for VetBiz Vendor Information Pages (VIP) Verification Program?

For the purposes of part 74, the following definitions apply.

*Center for Veterans Enterprise* (CVE) is an office within the U.S. Department of Veterans Affairs (VA) and is a subdivision of VA's Office of Small and Disadvantaged Business Utilization. The CVE helps veterans interested in forming or expanding their own small businesses. It also helps VA contracting offices identify veteran-owned small businesses and works with the Small Business Administration's Veterans Business Development Officers and Small Business Development Centers nationwide regarding veterans' business financing, management, and technical assistance needs.

*Days* are calendar days. In computing any period of time described in part 74, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CVE is closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Day-to-day management* means supervising the executive team, formulating sound policies and setting strategic direction.

*Day-to-day operations* mean the marketing, production, sales, and administrative functions of the firm.

*Eligible individual* means a veteran, service-disabled veteran or surviving spouse, as defined in this section.

*Full-time* means working at the business during the normal working hours, which equate to Monday through Friday, approximately 9 a.m. to 5 p.m.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, and mother-in-law.

*Joint venture* is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.

*Negative control* includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's chapter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

*Non-veteran* means any individual who does not claim veteran status, or upon whose status an applicant or participant does not rely in qualifying for VetBiz Vendor Information Pages (VIP) Verification Program participation.

*Office of Small and Disadvantaged Business Utilization* is the office within the Department of Veterans Affairs that establishes and monitors small business program goals at the prime and subcontract levels and which functions as the ombudsman for veterans and service-disabled veterans seeking procurement opportunities with the Department.

*Participant* means a veteran-owned small business concern that has verified status in the VetBiz Vendor Information Pages database.

*Primary industry classification* means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the participant. The NAICS code designations are described in the North American Industry Classification System (NAICS) Manual published by the U.S. Office of Management and Budget.

*Principal place of business* means the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's current business records are kept. If the office from which management is directed and where the current business records are kept are in different locations, CVE will determine the principal place of business for program purposes.

*Same or similar line of business* means business activities within the same three-digit "Major Group" of the NAICS Manual as the primary industry classification of the applicant or participant. The phrase "same business area" is synonymous with this definition.

*Service-disabled veteran* is a veteran who possesses either a disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a disability determination from the Department of Defense.

*Service-disabled veteran-owned small business concern* is a business not less than 51 percent of which is owned by one or more service-disabled veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; the management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, a spouse or permanent caregiver of such veteran. In addition, some businesses may be owned and operated by an eligible surviving spouse. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

*Small business concern* is—CVE applies the small business concern definition established by 48 CFR 2.101.

*Surviving spouse* is any individual identified as such by VA's Veterans Benefits Administration and listed in its database of veterans and family members. To be eligible for VetBiz VIP Verification, the following conditions must apply:

(1) If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described in paragraph (2) of this definition, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

(2) The period referred to in paragraph (1) of this definition is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under Federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability or died as a direct result of a service-connected disability.

**Note to definition of surviving spouse:** For program eligibility purposes, the surviving spouse has the same rights and entitlements of the service-disabled veteran who transferred ownership upon his or her death.

*Unconditional ownership* means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

*VA* is the U.S. Department of Veterans Affairs.

*Vendor Information Pages (VIP)* is a database of businesses eligible to participate in VA's Veteran-owned Small Business Program. The online database may be accessed at no charge via the Internet at *http://www.VetBiz.gov.*

*Verification eligibility period* is a 12-month period that begins on the date the Center for Veterans Enterprise issues the approval letter establishing verified status. The participant must submit a new application each year to continue eligibility.

*VetBiz.gov (VetBiz)* is a Web portal VA maintains at *http://www.VetBiz.gov.* It hosts the Vendor Information Pages database.

*Veteran* is a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for any length of time and at any place and who was discharged or released under conditions other than dishonorable. Reservists or members of

the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

*Veteran-owned small business concern (VOSB)* is a small business concern that is not less than 51 percent owned by one or more veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; the management and daily business operations of which are controlled by one or more veterans and qualifies as "small" for Federal business size standard purposes. All service-disabled veteran-owned small business concerns (SDVOSBs) are also, by definition, veteran-owned small business concerns. When used in these guidelines, the term "VOSB" includes SDVOSBs.

*Veterans Affairs Acquisition Regulation (VAAR)* is the set of rules that specifically govern requirements exclusive to the U.S. Department of Veterans Affairs (VA) prime and subcontracting actions. The VAAR is chapter 8 of title 48, Code of Federal Regulations, and supplements the Federal Acquisition Regulation (FAR), which contains guidance applicable to most Federal agencies.

**§ 74.2 What are the eligibility requirements a concern must meet for VetBiz VIP Verification Program?**

(a) *Ownership and control.* A small business concern must be unconditionally owned and controlled by one or more eligible veterans, service-disabled veterans or surviving spouses, have completed the online Vendor Information Pages database forms at *http://www.VetBiz.gov,* and has been examined by VA's Center for Veterans Enterprise. Such businesses appear in the VIP database as "verified."

(b) *Good character.* Veterans, service-disabled veterans and surviving spouses with ownership interests in VetBiz verified businesses must have good character. Debarred or suspended concerns or concerns owned or controlled by debarred or suspended persons are ineligible for VetBiz VIP Verification.

(c) *False Statements.* If, during the processing of an application, CVE determines that an applicant has knowingly submitted false information, regardless of whether correct information would cause CVE to deny the application, and regardless of whether correct information was given to CVE in accompanying documents, CVE will deny the application. If, after verifying the Participant's eligibility, CVE discovers that false information has been knowingly submitted by a firm, CVE will remove the "verified" status from the VIP database and notify the business by phone and mail. Whenever CVE determines that the applicant submitted false information, the matter will be referred to the Office of Inspector General for review. In addition, the CVE will request that debarment proceedings be initiated by the Department.

(d) *Federal financial obligations.* Neither a firm nor any of its eligible individuals that fails to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing, is eligible for VetBiz VIP Verification.

(e) *U.S. Small Business Administration (SBA) Protest Decisions.* Any firm registered in the VetBiz VIP database that is found to be ineligible due to an SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database. Until such time as CVE receives official notification that the firm has proven that it has successfully overcome the grounds for the determination or that the SBA decision is overturned on appeal, the firm will not be eligible to participate in the 38 U.S.C. 8127 program.

**§ 74.3 Who does the Center for Veterans Enterprise (CVE) consider to own a veteran-owned small business?**

An applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans.

(a) *Ownership must be direct.* Ownership by one or more veterans or service-disabled veterans must be direct ownership. An applicant or participant owned principally by another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust. For employee stock ownership plans where 5 or fewer persons who are individuals, estates, or trusts own 50 percent or more of the total combined voting power of the corporation, the employee plan will be determined to be "excluded stock" and eligible parties must control 51 percent or more of the combined voting power of the corporation. For employee stock ownership plans where greater than 5 persons who are individuals, estates, or trusts own 50 percent or more of the total stock, eligible parties must control 51 percent or more of the combined voting power of the corporation, including the ESOP stock.

(b) *Ownership must be unconditional.* Ownership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. In particular, CVE will evaluate ownership according to the following criteria for specific types of small business concerns.

(1) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more veterans or service-disabled veterans. The ownership must be reflected in the concern's partnership agreement.

(2) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more veterans or service-disabled veterans.

(3) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more veterans or service-disabled veterans.

(c) *Stock options' effect on ownership.* In determining unconditional ownership, CVE will disregard any unexercised stock options or similar agreements held by veterans or service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-veterans will be treated as exercised, except for any ownership interests that are held by investment companies licensed under

part 107 of title 13, Code of Federal Regulations.

(d) *Profits and distributions.* One or more veterans or service-disabled veterans must be entitled to receive:

(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporate, partnership, or LLC applicant concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock owned in the event of dissolution of the corporation, partnership, or LLC.

(4) An eligible individual's ability to share in the profits of the concern should be commensurate with the extent of his/her ownership interest in that concern.

(e) *Change of ownership.* (1) A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans or service-disabled veterans own and control it after the change and the participant files a new application identifying the new veteran owners or their new business interest.

(2) Any participant that is performing contracts and desires to substitute one veteran owner for another shall submit a proposed novation agreement and supporting documentation in accordance with FAR Subpart 42.12 to the contracting officer prior to the substitution or change of ownership for approval.

(3) Where the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file a new application with contracting officer and CVE within 60 days of the change. Existing contracts may be performed to the end of the instant term. However, no options may be exercised.

(4) Continued eligibility of the participant with new ownership and the award of any new contracts require that CVE verify all eligibility requirements are met by the concern and the new owners.

(f) *Community property laws given effect.* In determining ownership interests when an owner resides in any of the community property States or territories of the United States, CVE considers applicable State community property laws. If only one spouse claims veteran status, that spouse's ownership interest will be considered unconditionally held only to the extent it is vested by the community property laws.

**§ 74.4 Who does CVE consider to control a veteran-owned small business?**

(a) Control means both the day-to-day management and long-term decision-making authority for the VOSB. Many persons share control of a concern, including each of those occupying the following positions: Officer, director, general partner, managing partner, managing member and manager. In addition, key employees who possess expertise or responsibilities related to the concern's primary economic activity may share significant control of the concern. CVE will consider the control potential of such key employees on a case-by-case basis.

(b) Control is not the same as ownership, although both may reside in the same person. CVE regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. An applicant or participant's management and daily business operations must be conducted by one or more veterans or service-disabled veterans. Individuals managing the concern must have managerial experience of the extent and complexity needed to run the concern. A veteran need not have the technical expertise or possess a required license to be found to control an applicant or participant if he or she can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, where a critical license is held by a non-veteran having an equity interest in the applicant or participant firm, the non-veteran may be found to control the firm.

(c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. With the exception of joint-venture agreements, an eligible owner may only have one business participating in the Verification Program at one time and must work full-time in the business as defined in § 74.1.

(2) An eligible full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or participant.

(3) One or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business. Work in a wholly-owned subsidiary of the applicant or participant may be considered to meet the requirement of full-time devotion. This applies only to a subsidiary owned by the VOSB itself, and not to firms in which the veteran has a mere ownership interest.

(4) Except as provided in paragraph (d)(1) of this section, a veteran owner's unexercised right to cause a change in the management of the applicant concern does not in itself constitute veteran control, regardless of how quickly or easily the right could be exercised.

(d) In the case of a partnership, one or more veterans or service-disabled veterans must serve as general partners, with control over all partnership decisions. A partnership in which no veteran is a general partner will be ineligible for participation.

(e) In the case of a limited liability company, one or more veterans or service-disabled veterans must serve as management members, with control over all decisions of the limited liability company.

(f) One or more veterans or service-disabled veterans must control the board of directors of a corporate applicant or participant.

(1) CVE will deem veterans or service-disabled veterans to control the board of directors where:

(i) A single veteran owns 100 percent of all voting stock of an applicant or participant concern;

(ii) A single veteran owns at least 51 percent of all voting stock of an applicant or participant, the individual is on the board of directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where supermajority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by State law, the veteran must own at least the percent of the voting stock needed to overcome any such supermajority voting requirements; or

(iii) No single veteran owns 51 percent of all voting stock but multiple veterans in combination do own at least 51 percent of all voting stock, each such veteran is on the board of directors, no supermajority voting requirements exist, and the veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has supermajority voting requirements, the veteran shareholders must own at least that percentage of voting stock needed to overcome any such supermajority ownership requirements.

(2) Where an applicant or participant does not meet the requirements set forth in paragraph (d)(1) of this section, the veteran(s) upon whom eligibility is based must control the board of

directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (e.g., in a concern having a two-person board of directors where one individual on the board is a veteran and one is not, the veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible for VetBiz VIP Verification). Where a concern seeks to comply with this paragraph:

(i) Provisions for the establishment of a quorum cannot permit non-veteran directors to control the board of directors, directly or indirectly;

(ii) Any executive committee of the board of directors must be controlled by veteran directors unless the executive committee can only make recommendations to and cannot independently exercise the authority of the board of directors.

(3) Non-voting, advisory, or honorary directors may be appointed without affecting veterans' or service-disabled veterans' control of the board of directors.

(4) Arrangements regarding the structure and voting rights of the board of directors must comply with applicable state law.

(g) Non-veterans may be involved in the management of an applicant or participant, and may be stockholders, partners, limited liability members, officers, or directors of the applicant or participant. With the exception of a spouse or personal caregiver who represents a severely disabled veteran owner, no such non-veteran or immediate family member may:

(1) Exercise actual control or have the power to control the applicant or participant;

(2) Be a former employer or a principal of a former employer of any affiliated business of the applicant or participant, unless it is determined by the CVE that the relationship between the former employer or principal and the eligible individual or applicant concern does not give the former employer actual control or the potential to control the applicant or participant and such relationship is in the best interests of the participant firm; or

(3) Receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.

(h) Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

(i) Non-veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-veterans effectively to prevent a quorum or block actions proposed by the veterans or service-disabled veterans.

(2) A non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence business decisions of the participant, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization.

(3) A non-veteran or entity controls the applicant or participant or an individual veteran owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-veteran or entity the power to control a firm.

*(4) Business relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.*

#### § 74.5 How does CVE determine affiliation?

The Center for Veterans Enterprise applies the affiliation rules established by the Small Business Administration in 13 CFR part 121.

### Application Guidelines

#### § 74.10 Where must an application be filed?

An application for VetBiz VIP Verification status must be electronically filed in the Vendor Information Pages database located in the Center for Veterans Enterprise's Web portal, *http://www.VetBiz.gov.* Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern, containing estimated processing time and other information. Address information for the CVE is also contained on the Web portal. Correspondence may be dispatched to: Director, Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0675.)

#### § 74.11 How does CVE process applications for VetBiz VIP Verification Program?

(a) The Director, Center for Veterans Enterprise, is authorized to approve or deny applications for VetBiz VIP Verification. The CVE will receive, review and evaluate all VetBiz VIP Verification applications. CVE will advise each applicant within 30 days, when practicable, after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. CVE will process an application for VetBiz VIP Verification status within 60 days, when practicable, of receipt of a complete application package. Incomplete application packages will not be processed.

(b) CVE, in its sole discretion, may request clarification of information contained in the application at any time in the eligibility determination process. CVE will take into account any clarifications made by an applicant in response to a request for such by CVE.

(c) An applicant's eligibility will be based on circumstances existing on the date of application, except where clarification is made pursuant to paragraph (b) of this section or as provided in paragraph (d) of this section.

(d) Changed circumstances for an applicant occurring subsequent to its application and which adversely affect eligibility will be considered and may constitute grounds for denial of the application. The applicant must inform CVE of any changed circumstances that could adversely affect its eligibility for the program (i.e., ownership or control changes) during its application review. Failure to inform CVE of any such changed circumstances constitutes good cause for which CVE may withdraw verified status for the participant if non-compliance is discovered after a participant has been verified.

(e) The decision of the Director, CVE, to approve or deny an application will

be in writing. A decision to deny verification status will state the specific reasons for denial, and will inform the applicant of any appeal rights.

(f) If the Director, CVE, approves the application, the date of the approval letter is the date of participant verification for purposes of determining the participant's verification eligibility term.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0675.)

**§ 74.12 What must a concern submit to apply for VetBiz VIP Verification Program?**

Each VetBiz VIP Verification applicant must submit the electronic forms and attachments CVE requires. All electronic forms are available on the VetBiz.gov Vendor Information Pages database Web pages. At the time the applicant dispatches the electronic forms, the applicant must also retain on file at the principal place of business a completed copy of the electronic forms supplemented by manual records that will be used in verification examinations. These forms and attachments will include, but not be limited to, financial statements, Federal personal and business tax returns, payroll records and personal history statements. An applicant must also retain in the application file IRS Form 4506, Request for Copy or Transcript of Tax Form. These materials shall be filed together to maximize efficiency of verification examination visits. Together with the electronic documents, these manual records will provide the CVE verification examiner with sufficient information to establish the management, control and operating status of the business on the date of submission.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0675.)

**§ 74.13 Can an applicant ask CVE to reconsider its initial decision to deny an application?**

(a) An applicant may request that the Director, CVE, reconsider his or her decision to deny an application by filing a request for reconsideration with CVE within 30 days of receipt of CVE's denial decision. "Filing" means a document is received by CVE by 5:30 p.m., eastern time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE. Submit requests for reconsideration to: Director, Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. A formal decision will be issued within 60 days after receipt.

(b) The Director, CVE, will issue a written decision within 60 days, when practicable, of receipt of the applicant's request. The Director, CVE, may either approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the Director, CVE, will explain why the applicant is not eligible for the VetBiz VIP Verification and give specific reasons for the denial.

(c) If the Director, CVE, denies the application solely on issues not raised in the initial denial, the applicant may ask for reconsideration as if it were an initial denial.

(d) If CVE determines that a concern may not qualify as small, they may directly deny an application for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA). A concern whose application is denied because it is other than a small business concern by CVE may request a formal size determination from the SBA Associate Administrator, Office of Government Contracting (ATTN: Director, Office of Size Standards), 409 3rd Street, SW., Washington, DC 20416. A favorable determination by SBA will enable the firm to immediately submit a new VetBiz VIP Verification.

(e) A denial decision that is based on the failure to meet any veteran or service-disabled veteran eligibility criteria is not subject to a request for reconsideration and is the final decision of CVE.

(f) Except as provided in paragraph (c) of this section, the decision on the request for reconsideration shall be final.

(g) The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

**§ 74.14 Can an applicant or participant reapply for admission to the VetBiz VIP Verification Program?**

Once an application, a request for reconsideration, or an appeal to a cancellation notice, as applicable, has been denied, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE.

**§ 74.15 What length of time may a business participate in VetBiz VIP Verification Program?**

(a) A participant receives an eligibility term of 1 year from the date of CVE's approval letter establishing verified status. The participant must maintain its eligibility during its tenure and must inform CVE of any changes that would adversely affect its eligibility. The eligibility term may be shortened by cancellation by CVE or voluntary withdrawal by the participant (i.e., no longer eligible as a small business concern), as provided for in this subpart.

(b) When at least 50 percent of the assets of a concern are the same as those of an affiliated business, the concern will not be eligible for verification.

(c) CVE may initiate a verification examination whenever it receives credible information calling into the question a participant's eligibility as a VOSB. Upon its completion of the examination, CVE will issue a written decision regarding the continued eligibility status of the questioned participant.

(d) If CVE finds that the participant does not qualify as a VOSB, the procedures at § 74.22 will apply.

(e) If CVE finds that the participant continues to qualify as a VOSB, the program term remains in effect.

**Oversight Guidelines**

**§ 74.20 What is a verification examination and what will CVE examine?**

(a) *General.* A verification examination is an investigation by CVE officials, which verifies the accuracy of any statement or information provided as part of the VetBiz VIP Verification application process. Thus, examiners may verify that the concern currently meets the eligibility requirements, and that it met such requirements at the time of its application or its most recent size recertification. An examination may be conducted on a random, unannounced basis, or upon receipt of specific and credible information alleging that a participant no longer meets eligibility requirements.

(b) *Scope of examination.* CVE may conduct the examination, or parts of the program examination, at one or all of the participant's offices. CVE will determine the location of the examination. Examiners may review any information related to the concern's eligibility requirements including, but not limited to, documentation related to the legal structure, ownership and control of the concern. As a minimum,

examiners shall review all documents supporting the application, as described in § 74.12. These include: Financial statements; Federal personal and business tax returns; personal history statements; and Request for Copy or Transcript of Tax Form (IRS Form 4506) for up to 3 years. Other documents, which may be reviewed include (if applicable): Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued Certificates of Good Standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses.

**§ 74.21 What are the ways a business may exit VetBiz VIP Verification Program status?**

A participant may:

(a) Voluntarily cancel its status by submitting a written request to CVE requesting that the "verified" status button be removed from the Vendor Information Pages database; or

(b) Delete its record entirely from the Vendor Information Pages database; or

(c) CVE may cancel the "verified" status button for good cause upon formal notice to the participant. Examples of good cause include, but are not limited to, the following:

(1) Submission of false information in the participant's VetBiz VIP Verification application.

(2) Failure by the participant to maintain its eligibility for program participation.

(3) Failure by the participant for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control by veterans, service-disabled veterans or surviving spouses.

(4) Failure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.

(5) Debarment, suspension, voluntary exclusion, or ineligibility of the participant or its owners.

(6) A pattern of failure to make required submissions or responses to CVE in a timely manner, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(7) Cessation of the participant's business operations.

(8) Failure by the concern to pay or repay significant financial obligations owed to the Federal Government.

(9) Failure by the concern to obtain and keep current any and all required permits, licenses, and charters, including suspension or revocation of any professional license required to operate the business.

(10) Failure by the concern to provide an updated application (VA Form 0877) within 60 days of any change in ownership.

(d) The examples of good cause listed in paragraph (c) of this section are intended to be illustrative only. Other grounds for canceling a participant's verified status include any other cause of so serious or compelling a nature that it affects the present responsibility of the participant.

**§ 74.22 What are the procedures for cancellation?**

(a) *General.* When CVE believes that a participant's verified status should be cancelled prior to the expiration of its eligibility term, CVE will notify the participant in writing. The Notice of Proposed Cancellation Letter will set forth the specific facts and reasons for CVE's findings, and will notify the participant that it has 30 days from the date it receives the letter to submit a written response to CVE explaining why the proposed ground(s) should not justify cancellation.

(b) *Recommendation and decision.* Following the 30-day response period, the Director, CVE, will consider any information submitted by the participant. Upon determining that cancellation is not warranted, the Director, CVE, will notify the participant in writing. If cancellation appears warranted, the Director, CVE, will make a decision whether to cancel the participant's verified status.

(c) *Notice requirements.* Upon deciding that cancellation is warranted, the Director, CVE, will issue a Notice of Verified Status Cancellation. The Notice will set forth the specific facts and reasons for the decision, and will advise the concern that it may re-apply after it has met all eligibility criteria.

(d) *Effect of verified status cancellation.* After the effective date of cancellation, a participant is no longer eligible to appear as "verified" in the VetBiz VIP database. However, such concern is obligated to perform previously awarded contracts to the completion of their existing term of performance.

(e) *Appeals.* A participant may file an appeal with the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise, concerning the Notice of Verified Status Cancellation within 30 days of receipt of CVE's cancellation decision. "Filing" means a document is received by CVE by 5:30 p.m., eastern time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at CVE. Submit appeals to: Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. A formal decision will be issued within 60 days after receipt. The decision on the appeal shall be final.

**Records Management**

**§ 74.25 What types of personally identifiable information will VA collect?**

In order to establish owner eligibility, the Department will collect individual names and Social Security numbers for veterans, service-disabled veterans and surviving spouses who represent themselves as having ownership and control interests in a specific business seeking to obtain verified status.

**§ 74.26 What types of business information will VA collect?**

VA will examine a variety of business records. See § 74.12, "What is a verification examination and what will CVE examine?"

**§ 74.27 How will VA store information?**

VA intends to store records provided to complete the VetBiz Vendor Information Pages registration fully electronically on the Department's secure servers. CVE personnel will compare information provided concerning owners who have veteran status, service-disabled veteran status or surviving spouse status against electronic records maintained by the Department's Veterans Benefits Administration. Records collected during examination visits will be scanned onto portable media and fully secured in the Center for Veterans Enterprise, located in Washington, DC.

**§ 74.28 Who may examine records?**

Personnel from the Department of Veterans Affairs, Center for Veterans Enterprise and its agents, including personnel from the Small Business Administration, may examine records to ascertain the ownership and control of the applicant or participant.

**§ 74.29 When will VA dispose of records?**

The records, including those pertaining to businesses not determined

to be eligible for the program, will be kept intact and in good condition for seven years following a program examination or the date of the last Notice of Verified Status Approval letter. Longer retention will not be required unless a written request is received from the Government Accountability Office not later than 30 days prior to the end of the retention period.

(Authority: 38 U.S.C. 8127(f))

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**BILLING CODE P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

**[Docket Nos. MC2010–14 and CP2010–13; Order No. 376]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List. This action is consistent with a postal reform law. Republication of the lists of market dominant and competitive products is also consistent with statutory requirements.

**DATES:** Effective February 8, 2010 and is applicable beginning December 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 65169 (December 9, 2009).

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### I. Introduction

The Postal Service seeks to add a new product, Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

### II. Background

On November 25, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Bilateral Agreement or Agreement) to the Competitive Product List.[1] The Postal Service asserts that the Bilateral Agreement is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–14.

The Postal Service contemporaneously filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for inbound competitive services as reflected in the Bilateral Agreement. More specifically, the Bilateral Agreement, which has been assigned Docket No. CP2010–13, governs Inbound Parcel Post and Xpresspost-USA from Canada.

The Postal Service acknowledges an existing bilateral agreement with Canada Post for inbound competitive services, which is set to expire at the end of calendar year 2009. *Id.* at 3. The Postal Service asserts that the proposed MCS language in Docket No. MC2010–14 "resembles the language" for the existing bilateral agreement and that the differences "reflect changes to certain operational details" including a reclassification of Canada Post's "Xpresspost-USA" product from a market dominant product to a competitive product. *Id.* The Commission reviewed and approved that bilateral agreement in Docket Nos. CP2009–9 and MC2009–8. The Commission had previously approved the "Xpresspost-USA" product as a market dominant product in Docket No. MC2009–7.[2] Qualifying that approval, however, the Commission noted that "Xpresspost exhibits characteristics of a competitive product." *Id.* at 7.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision including proposed MCS language, a management analysis of the Bilateral Agreement, certification of compliance with 39 U.S.C. 3633(a), and certification of the Governors' vote;[3] (2) a Statement of Supporting Justification as required by 39 CFR 3020.32;[4] (3) a redacted version of the agreement;[5] and (4) an application for non-public treatment of pricing and supporting documents filed under seal.[6] Request at 2.

The Bilateral Agreement covers parcels arriving in the United States by surface transportation rather than air. Governors' Decision No. 09–16.[7] The Bilateral Agreement also covers Xpresspost, a Canadian service for documents, packets, and light-weight packages. *Id.* The Bilateral Agreement allows Canada Post to tender surface parcels and Xpresspost to the Postal Service at negotiated prices rather than the default prices set by the Universal Postal Union. *Id.* The Bilateral Agreement is effective January 1, 2010 and continues until December 31, 2011. *Id.*, Attachment 3, at 7.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, asserts that "[t]he addition of the [Bilateral] Agreement as a competitive product will enable the Commission to verify that the agreement covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs." *Id.*, Attachment 2, at 2. Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment 1, Attachment C. He observes that the Bilateral Agreement "should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs." *Id.*

In Order No. 351, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[8]

### III. Comments

Comments were filed by the Public Representative.[9] No other interested

[1] Request of United States Postal Service to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List and Notice of Filing (Under Seal) the Enabling Governors' Decision and Agreement, November 25, 2009 (Request).

[2] Docket No. MC2009–7, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, December 31, 2008 (Order No. 163).

[3] Attachment 1 to the Request.

[4] Attachment 2 to the Request.

[5] Attachment 3 to the Request.

[6] Attachment 4 to the Request. The Postal Service erroneously noted in its Request that an Attachment 5 which contained the application for non-public treatment was filed. The application for non-public treatment is Attachment 4; there is no Attachment 5.

[7] *See* Attachment 1 to the Request.

[8] PRC Order No. 351, Notice and Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, December 1, 2009 (Order No. 351).

[9] Public Representative Comments in Response to United States Postal Service Request to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Competitive Services to the Competitive Products List, and Notice of Filing Agreement and Enabling Governors' Decision

person submitted comments. The Public Representative states the Postal Service's Request comports with the applicable provisions of title 39. *Id.* at 1. He also states that the Postal Service's Request comports with the requirements of 39 U.S.C. 3632 and 39 CFR 3015. *Id.* at 1–2.

The Public Representative states that the Bilateral Agreement is in compliance with the requirements of 39 U.S.C. 3633(a). He asserts that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. Additionally, the Public Representative states that the Bilateral Agreement satisfies the requirements of 39 U.S.C. 3633 in that it will not allow market dominant products to subsidize competitive products, ensures each competitive product covers its attributable costs, and enables competitive products as a whole to cover their costs and contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. *Id.* at 2. He also indicates that the Postal Service has complied with 39 U.S.C. 3642 and 39 CFR 3020. *Id.* The Public Representative relates that he has reviewed the supporting documentation filed under seal, and the Bilateral Agreement offers provisions favorable both to the Postal Service and the general public. *Id.* at 3.

## IV. Commission Analysis

The Commission has reviewed the Request, the Agreement, the financial analysis filed under seal, and the comments filed by all parties.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning the Bilateral Agreement to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* In determining whether to assign the Bilateral Agreement to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

In Docket No. RM2007–1, Order No. 43, the Commission determined that Inbound Surface Parcel Post shipments tendered at negotiated rates are appropriately classified as competitive.[10] The Bilateral Agreement falls within this category.

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies. Request, Attachment 2, at 2–3. It also contends that the Agreement relates to the exchange between the Postal Service and Canada Post of Inbound Surface Parcel Post at negotiated prices which it has determined to be a competitive product because of its exclusion from the letter monopoly and the level of competition in the market for these services. *Id.* The Bilateral Agreement also includes Xpresspost, which the Postal Service asserts should be a competitive product for essentially the same reasons. *Id.* at 3. The Postal Service states that for both products, the Agreement provides adequate incentive for Canada Post and its shipping customers to tender volume to it rather than a competitor. It contends that it may not increase prices without the risk of losing inbound Canada-origin volume to a private competitor in the international shipping industry. *Id.*

The Postal Service asserts that the underlying parcel services are excluded from the Private Express Statutes' prohibition on private carriage of letters over post routes. *Id.*, para. (e). It also contends that Xpresspost is excluded from the Private Express Statutes' prohibition. *Id.* The Postal Service states that the rates payable under the Agreement are more than six times higher than the current price of a one-ounce, First Class letter, and it presumes that a competitor could also offer prices exceeding this comparison rate. *Id.* The Postal Service also mentions that the determination that Xpresspost is competitive is consistent with its study and deliberations on the appropriate classification of the service as a result of the Commission's comments in Order No. 163. *Id.* at 2.

Finally, the Postal Service states that the market for international parcel delivery services is highly competitive, and the Bilateral Agreement provides a benefit to Canada Post's and the Postal Service's small business customers by providing an additional option for shipping articles between the United States and Canada. It concludes that there should be little, if any, negative impact on small business. *Id.* at 4–5.

In the instant Agreement, Xpresspost is classified as a competitive product for the first time. This reflects a change from the 2009 bilateral agreement with Canada Post. For purposes of the 2009 agreement, Xpresspost was subsumed within the market dominant product inbound Air Letter Post *i.e.*, Air Letters and Cards (Air LC)).[11] In reviewing that agreement, the Commission determined that Xpresspost, a Canada Post service for documents and merchandise, "exhibits characteristics of a competitive product...[that] appears to parallel domestic Priority Mail."[12] *See* Order No. 163 at 7. The Commission concluded that Xpresspost should be classified as a competitive product. *Id.*

The Commission concurs with the Postal Service's decision to classify Xpresspost as a competitive product. Request, Attachment 2, at 6.

No commenter opposes the proposed classification of the Bilateral Agreement as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that the Bilateral Agreement is appropriately classified as a competitive product and should be added to the Competitive Product List.

(Under Seal), December 15, 2009 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Competitive Services to the Competitive Product List, December 15, 2009. The motion is granted.

[10] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

[11] *See* Request of United States Postal Service to Add Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market-Dominant Services to the Market-Dominant Product List, Notice of Type 2 rate Adjustment, and Notice of Filing Agreement (Under Seal), November 13, 2008.

[12] *See* Docket No. MC2009–7 R2009–1, PRC Order No. 163, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, December 31, 2008, at 7.

The Postal Service's filing seeks to establish a new product for Inbound competitive services. The Postal Service notes that the Commission observed in the FY 2007 and FY 2008 Annual Compliance Determination that revenues for inbound Surface Parcel Post at non-UPU rates did not cover its attributable cost during those fiscal years. *Id.,* Attachment 2, at 5. It asserts that the negotiated rates in the instant Bilateral Agreement are an improvement over the 2009 rates and include an adjustment in the second year of the Bilateral Agreement to maintain cost coverage. *Id.*

*Data issues.* The Postal Service's filing is responsive to the Commission's concerns representing an improvement over the existing rates. The Postal Service uses FY 2008 costs rather than FY 2009 costs to forecast unit costs for Inbound Surface Parcel Post and Xpresspost during the contract period, CY 2010 and CY 2011. When forecasting unit costs, the use of more recent data is preferable. In response to Chairman's Information Request No. 1,[13] the Postal Service states that it was unable to provide FY 2009 processing, delivery, and "other" unit costs, or FY 2009 domestic air and surface transportation costs per kilogram, notwithstanding that its Request was filed in FY 2010.[14] The use of FY 2008 rather than the more recent FY 2009 costs necessitates relying on Global Insight indices to inflate FY 2008 costs for 3 years *i.e.*, CY 2009, CY 2010, and CY 2011) instead of 2 years *i.e.*, CY 2010 and CY 2011), and may produce less accurate forecasts than desirable. In subsequent filings, the Commission requests the Postal Service to submit the most recent supporting data available even if it is unaudited, in addition to the most recent ACD data.

The Postal Service's financial model also reveals that for CY 2010, Xpresspost merchandise will incur the cost of scans for Signature Confirmation. For CY 2011, however, the Postal Service does not include the cost of Signature Confirmation scans in its model. Rather, it uses the cost of Delivery Confirmation scans. The effect on costs of using Delivery rather than Signature Confirmation scans in CY 2011 is dramatic. The cost associated with Xpresspost merchandise scans decrease more than 84 percent between CY 2010 and CY 2011, resulting in a slight reduction in CY 2011 total costs for Inbound Surface Parcel Post and Xpresspost, as compared to CY 2010.

The Postal Service explains that the use of Delivery Confirmation scan costs reflects a planned change in its process of capturing signatures.

Postal Service revenues can be adversely affected if certain "targets" for delivery service and scanning are not met. During each year of the Bilateral Agreement, the Postal Service is not expected to receive the maximum revenues available because it fails to meet such "Pay for Performance" targets. Request at 2. *See* WP-Canada Bilateral-Comp-IB–06, WP-Canada Bilateral-Comp-IB–07, WP-Canada Bilateral-Comp-IB–08, and WP-Canada Bilateral-Comp-IB–09. This occurs because of an increase in the targets for delivery, and the absence of any improvement in the Postal Service's delivery service and scan performance during the contract. The Commission encourages the Postal Service to improve its performance in order to generate additional revenue and improve cost coverage.

Based on the data submitted and the comments received, the Commission finds that the Bilateral Agreement should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Bilateral Agreement indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service shall, no later than 30 days after the effective date of the new contract, provide cost, revenue, and volume data associated with the current contract.

The Postal Service submitted the Bilateral Agreement which has not been executed by the parties. The Postal Service is directed to file the executed Bilateral Agreement with the Commission within 30 days of execution.

The Postal Service shall promptly notify the Commission if the Bilateral Agreement terminates earlier than its proposed term, but no later than the actual termination date. The Commission will then remove the Bilateral Agreement from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves the Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services as a new product. The existing contract will be removed from the Competitive Product List. The revision to the Competitive Product List is shown below the signature of this order and will be effective January 1, 2010.

## V. Ordering Paragraphs

*It is ordered:*

1. Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13–Inbound Surface Parcel Post at Non-UPU Rates and Xpresspost USA) is added to the Competitive Product List as a new product under International.

2. The Postal Service shall file cost, revenue, and volume data under the existing contract no later than 30 days after the effective date of the new contract.

3. The Postal Service shall file an executed copy of the Bilateral Agreement within 30 days of its execution.

4. The Postal Service shall notify the Commission if the Bilateral Agreement terminates earlier than its proposed term by no later than the actual termination date.

5. The Secretary shall arrange for the publication of this order in the **Federal Register**.

**List of Subjects in 39 CFR Part 3020**

Administrative practice and procedure; Postal Service.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

## PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

**Authority:** Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

**Appendix A to Subpart A of Part 3020—Mail Classification Schedule**

**Part A—Market Dominant Products**

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards

[13] Chairman's Information Request No. 1, December 10, 2009 (CHIR No. 1).

[14] Notice of the United States Postal Service of Filing Responses to Chairman's Information Request No. 1 and Revised Financial Documentation, December 16, 2009, Questions 7 and 8. In addition, the Postal Service filed Notice of the United States Postal Service of Filing Response to Chairman's Information Request No. 1, Question 8, on December 11, 2009. An accompanying Motion for Late Acceptance of Response to Chairman's Information Request No. 1, Question 8 was filed December 11, 2009. The motion is granted.

- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010-12 and R2010-2)

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals

[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services

[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services

[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forward
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)
  - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
  - Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select

Parcel Return Service

International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)

- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel post at Non-UPU Rates and Xpresspost-USA)
- International Money Transfer Service
- International Ancillary Services

Special Services
- Premium Forwarding Service

Negotiated Service Agreements
- Domestic
  - Express Mail Contract 1 (MC2008–5)
  - Express Mail Contract 2 (MC2009–3 and CP2009–4)
  - Express Mail Contract 3 (MC2009–15 and CP2009–21)
  - Express Mail Contract 4 (MC2009–34 and CP2009–45)
  - Express Mail Contract 5 (MC2010–5 and CP2010–5)
  - Express Mail Contract 6 (MC2010–6 and CP2010–6)
  - Express Mail Contract 7 (MC2010–7 and CP2010–7)
  - Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
  - Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
  - Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
  - Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
  - Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
  - Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
  - Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
  - Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
  - Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
  - Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
  - Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
  - Priority Mail Contract 1 (MC2008–8 and CP2008–26)
  - Priority Mail Contract 2 (MC2009–2 and CP2009–3)
  - Priority Mail Contract 3 (MC2009–4 and CP2009–5)
  - Priority Mail Contract 4 (MC2009–5 and CP2009–6)
  - Priority Mail Contract 5 (MC2009–21 and CP2009–26)
  - Priority Mail Contract 6 (MC2009–25 and CP2009–30)
  - Priority Mail Contract 7 (MC2009–25 and CP2009–31)
  - Priority Mail Contract 8 (MC2009–25 and CP2009–32)
  - Priority Mail Contract 9 (MC2009–25 and CP2009–33)
  - Priority Mail Contract 10 (MC2009–25 and CP2009–34)
  - Priority Mail Contract 11 (MC2009–27 and CP2009–37)
  - Priority Mail Contract 12 (MC2009–28 and CP2009–38)
  - Priority Mail Contract 13 (MC2009–29 and CP2009–39)
  - Priority Mail Contract 14 (MC2009–30 and CP2009–40)
  - Priority Mail Contract 15 (MC2009–35 and CP2009–54)
  - Priority Mail Contract 16 (MC2009–36 and CP2009–55)
  - Priority Mail Contract 17 (MC2009–37 and CP2009–56)
  - Priority Mail Contract 18 (MC2009–42 and CP2009–63)
  - Priority Mail Contract 19 (MC2010–1 and CP2010–1)
  - Priority Mail Contract 20 (MC2010–2 and CP2010–2)
  - Priority Mail Contract 21 (MC2010–3 and CP2010–3)
  - Priority Mail Contract 22 (MC2010–4 and CP2010–4)
  - Priority Mail Contract 23 (MC2010–9 and CP2010–9)
- Outbound International
  - Direct Entry Parcels Contracts
    - Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
  - Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
  - Global Expedited Package Services (GEPS) Contracts
    - GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
    - Global Expedited Package Services 2 (CP2009–50)
  - Global Plus Contracts
    - Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
    - Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
- Inbound International
  - Inbound Direct Entry Contracts with Foreign Postal Administrations
    - Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
    - Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
  - International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
- Competitive Product Descriptions
  - Express Mail
  - [Reserved for Group Description]
  - Express Mail
  - [Reserved for Product Description]
  - Outbound International Expedited Services
  - [Reserved for Product Description]
  - Inbound International Expedited Services
  - [Reserved for Product Description]
  - Priority
  - [Reserved for Product Description]
  - Priority Mail
  - [Reserved for Product Description]
  - Outbound Priority Mail International
  - [Reserved for Product Description]
  - Inbound Air Parcel Post
  - [Reserved for Product Description]
  - Parcel Select
  - [Reserved for Group Description]
  - Parcel Return Service
  - [Reserved for Group Description]
  - International
  - [Reserved for Group Description]
  - International Priority Airlift (IPA)
  - [Reserved for Product Description]
  - International Surface Airlift (ISAL)
  - [Reserved for Prduct Description]
  - International Direct Sacks—M–Bags
  - [Reserved for Product Description]
  - Global Customized Shipping Services
  - [Reserved for Product Description]
  - International Money Transfer Service
  - [Reserved for Product Description]
  - Inbound Surface Parcel Post (at non-UPU rates)
  - [Reserved for Product Description]
  - International Ancillary Services
  - [Reserved for Product Description]
  - International Certificate of Mailing
  - [Reserved for Product Description]
  - International Registered Mail
  - [Reserved for Product Description]
  - International Return Receipt
  - [Reserved for Product Description]
  - International Restricted Delivery
  - [Reserved for Product Description]
  - International Insurance
  - [Reserved for Product Description]
  - Negotiated Service Agreements
  - [Reserved for Group Description]
  - Domestic
  - [Reserved for Product Description]
  - Outbound International
  - [Reserved for Group Description]
- Part C—Glossary of Terms and Conditions [Reserved]
- Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–2629 Filed 2–5–10; 8:45 am]

**BILLING CODE 7710–FW–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[GA–200922; FRL–9097–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Georgia: Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** EPA is publishing this action to provide the public with notice of the update to the Georgia State Implementation Plan (SIP) compilation. In particular, materials submitted by Georgia that are incorporated by reference (IBR) into the Georgia SIP are being updated to reflect EPA-approved revisions to Georgia's SIP that have occurred since the last update. In this action EPA is also notifying the public of the correction of certain typographical errors.

**DATES:** This action is effective February 8, 2010.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder at the above Region 4 address or at (404) 562–9042.

**SUPPLEMENTARY INFORMATION:** Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA. Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52 "Approval and Promulgation of Implementation Plans," Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is "incorporated by reference." This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials submitted by states in their EPA-approved SIP revisions. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and stream-lined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain "SIP Compilations" that contain the federally-approved regulations and source specific permits submitted by each state agency. These SIP Compilations are contained in 3-ring binders and are updated primarily on an annual basis. Under the revised procedures, EPA is to periodically publish an informational document in the rules section of the **Federal Register** when updates are made to a SIP Compilation for a particular state. EPA's 1997 revised procedures were formally applied to Georgia on May 21, 1999 (64 FR 27699).

This action represents EPA's publication of the Georgia SIP Compilation update, appearing in 40 CFR part 52. In addition, notice is provided of the following typographical corrections to Table (c), (d), and (e) of paragraph 52.570, as described below:

1. Correcting typographical errors listed in paragraph 52.570(c), (d), and (e), as described below:

a. Revising paragraph 52.570(d) by removing all periods after the **Federal Register** notice citations in the "EPA Approval Date" column.

b. Revising the format of the date in the "State submittal date/effective date" column for "Murray County 8-Hour Ozone Maintenance Plan" in paragraph 52.570(e) to read as "6/15/07."

c. Revising paragraph 52.570(c) by removing the state effective date and EPA approval date for 391–3–1–.02, "Provisions" and merging these cells to re-format "Provisions" as a header.

d. Revising paragraph 52.570(c), by correcting the state citation for "391–3–1.02(2)," to read as "391–3–1–.02(2)."

e. Revising paragraph 52.570(c) by removing the state effective date and EPA approval date for 391–3–1–.02(2), "Emission Standards" and merging these cells to re-format "Emission Standards" as a header.

f. Revising paragraph 52.570(c) by correcting entries for 391–3–1–.02(2)(3) through 391–3–1–.02(2)(7) and 391–3–1–.02(2)(11) to read as "391–3–1–.02(3)," "391–3–1–.02(4)," "391–3–1–.02(5)," "391–3–1–.02(6)," "391–3–1–.02(7)," and "391–3–1–.02(11)."

g. Revising paragraph 52.570(e) by entering "Atlanta Metropolitan Area" in the "Applicable geographic or nonattainment area" column for entries 2 through 11.

h. Revising paragraph 52.570(e) by entering "6/17/96" in the "State Submittal date/effective date" column for entries 2 through 11.

i. Revising paragraph 52.570(e) by entering "4/26/99" in the "EPA approval date" column for entries 2 through 11.

j. Revising paragraph 52.570(e) by removing the entry for "Alternative Fuel Refueling Station/Park and Ride Transportation Center, Project DO–AR–211 is removed."

k. Revising paragraph 52.570(e) by revising the "EPA approval date" for entry "24. Alternative Fuel Refueling Station/Park and Ride Transportation Center, Project DO–AR–211 is removed," to read as "11/28/06, 71 FR 68743."

2. Revising the date format listed in paragraphs 52.570(c), (d) and (e); specifically the date format in the "state effective date," and "EPA approval date," columns for consistency. Dates are revised to be numerical month/day/year without additional zeros.

EPA has determined that today's action falls under the "good cause" exemption in the section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs and corrects typographical errors appearing the **Federal Register**. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment for this administrative action is "unnecessary" and "contrary to the public interest" since the codification (and typographical corrections) only reflect existing law. Immediate notice of this action in the **Federal Register**

benefits the public by providing the public notice of the updated Georgia SIP Compilation and notice of typographical corrections to the Georgia "Identification of Plan" portion of the **Federal Register**.

**Statutory and Executive Order Reviews**

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This administrative action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these Statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies (and corrects) provisions which are already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective when EPA approved them through previous rulemaking actions. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this action in the **Federal Register**. This update to Georgia's SIP Compilation and correction of typographical errors is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice and comment rulemaking. Prior EPA rulemaking actions for each individual component of the Georgia SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2009.

**J. Scott Gordon,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart L—Georgia

■ 2. Section 52.570 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

### § 52.570 Identification of plan.

* * * * *

(b) *Incorporation by reference.*

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to September 1, 2009, for Georgia was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after September 1, 2009, for Georgia will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303, the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–

6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA approved regulations.*

EPA APPROVED GEORGIA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| 391–3–1–.01 | Definitions | 6/8/08 | 6/11/09, 74 FR 27713 | |
| 391–3–1–.02 | **Provisions** | | | |
| 391–3–1–.02(1) | General Requirements | 3/20/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2) | **Emission Standards** | | | |
| 391–3–1–.02(2)(a) | General Provisions | 6/8/08 | 6/11/09, 74 FR 27713 | Except for paragraph 391–3–1–.02(2)(a)1. |
| 391–3–1–.02(2)(b) | Visible Emissions | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(c) | Incinerators | 6/15/98 | 12/2/99, 64 FR 67491 | |
| 391–3–1–.02(2)(d) | Fuel-burning Equipment | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(e) | Particulate Emission from Manufacturing Processes. | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(f) | Normal Superphosphate Manufacturing Facilities. | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(g) | Sulfur Dioxide | 7/17/02 | 7/9/03, 68 FR 40789 | |
| 391–3–1–.02(2)(h) | Portland Cement Plants | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(i) | Nitric Acid Plants | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(j) | Sulfuric Acid Plants | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(k) | Particulate Emission from Asphaltic Concrete Hot Mix Plants. | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(l) | Conical Burners | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(m) | Repealed | 6/30/75 | 10/3/75, 40 FR 45818 | |
| 391–3–1–.02(2)(n) | Fugitive Dust | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(o) | Cupola Furnaces for Metallurgical Melting. | 1/27/72 | 5/31/72, 37 FR 10842 | |
| 391–3–1–.02(2)(p) | Particulate Emissions from Kaolin and Fuller's Earth Processes. | 12/16/75 | 8/20/76, 41 FR 35184 | |
| 391–3–1–.02(2)(q) | Particulate Emissions from Cotton Gins. | 1/27/72 | 5/31/72, 37 FR 10842 | |
| 391–3–1–.02(2)(r) | Particulate Emissions from Granular and Mixed Fertilizer Manufacturing Units. | 1/27/72 | 5/31/72, 37 FR 10842 | |
| 391–3–1–.02(2)(t) | VOC Emissions from Automobile and Light Duty Truck Manufacturing. | 12/20/94 | 2/2/96, 61 FR 3817 | |
| 391–3–1–.02(2)(u) | VOC Emissions from Can Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(v) | VOC Emissions from Coil Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(w) | VOC Emissions from Paper Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |

EPA APPROVED GEORGIA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| 391–3–1–.02(2)(x) | VOC Emissions from Fabric and Vinyl Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(y) | VOC Emissions from Metal Furniture Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(z) | VOC Emissions from Large Appliance Surface Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(aa) | VOC Emissions from Wire Coating. | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(bb) | Petroleum Liquid Storage | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(cc) | Bulk Gasoline Terminals | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(dd) | Cutback Asphalt | 1/17/79 | 9/18/79, 44 FR 54047 | |
| 391–3–1–.02(2)(ee) | Petroleum Refinery | 1/9/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(ff) | Solvent Metal Cleaning | 5/29/96 | 4/26/99, 64 FR 20186 | |
| 391–3–1–.02(2)(gg) | Kraft Pulp Mills | 6/3/88 | 9/30/88, 53 FR 38290 | |
| 391–3–1–.02(2)(hh) | Petroleum Refinery Equipment Leaks. | 6/24/94 | 2/2/96, 61 FR 3817 | |
| 391–3–1–.02(2)(ii) | VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products. | 10/7/99 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(jj) | VOC Emissions from Surface Coating of Flat Wood Paneling. | 4/3/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(kk) | VOC Emissions from Synthesized Pharmaceutical Manufacturing. | 12/18/80 | 11/24/81, 46 FR 57486 | |
| 391–3–1–.02(2)(ll) | VOC Emissions from the Manufacture of Pneumatic Rubber Tires. | 12/18/80 | 11/24/81, 46 FR 57486 | |
| 391–3–1–.02(2)(mm) | VOC Emissions from Graphic Arts Systems. | 4/3/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(nn) | VOC Emissions from External Floating Roof Tanks. | 12/18/80 | 11/24/81, 46 FR 57486 | |
| 391–3–1–.02(2)(oo) | Fiberglass Insulation Manufacturing Plants. | 12/18/80 | 11/24/81, 46 FR 57486 | |
| 391–3–1–.02(2)(pp) | Bulk Gasoline Plants | 1/8/05 | 8/26/05 70 FR 50199 | |
| 391–3–1–.02(2)(qq) | VOC Emissions from Large Petroleum Dry Cleaners. | 4/3/91 | 10/13/92, 57 FR 46780 | |
| 391–3–1–.02(2)(rr) | Gasoline Dispensing Facility—Stage I. | 1/8/05 | 8/26/05, 70 FR 50199 | |
| 391–3–1–.02(2)(ss) | Gasoline Transport Vehicles and Vapor Collection Systems. | 1/8/05 | 8/26/05, 70 FR 50199 | |
| 391–3–1–.02(2)(tt) | VOC Emissions from Major Sources. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(uu) | Visibility Protection | 10/31/85 | 1/28/86, 51 FR 3466 | |

EPA APPROVED GEORGIA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| 391–3–1–.02(2)(vv) | Volatile Organic Liquid Handling and Storage. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(ww) | Perchloroethylene Dry Cleaners. | 11/15/94 | 6/27/96, 61 FR 33372 | Repealed. |
| 391–3–1–.02(2)(yy) | Emissions of Nitrogen Oxides from Major Sources. | 7/8/04 | 5/9/05, 70 FR 24310 | |
| 391–3–1–.02(2)(zz) | Gasoline Dispensing Facilities—Stage II. | 12/26/01 | 7/11/02, 67 FR 45909 | |
| 391–3–1–.02(2)(aaa) | Consumer and Commercial Products. | 10/27/93 | 4/26/99, 64 FR 20186 | |
| 391–3–1–.02(2)(bbb) | Gasoline Marketing | 6/24/03 | 6/17/04, 69 FR 33864 | |
| 391–3–1–.02(2)(ccc) | VOC Emissions from Bulk Mixing Tanks. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(ddd) | VOC Emissions from Offset Lithography. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(eee) | VOC Emissions from Expanded Polystyrene Products Manufacturing. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(fff) | Particulate Matter Emissions from Yarn Spinning Operations. | 6/15/98 | 12/2/99, 64 FR 67491 | |
| 391–3–1–.02(2)(hhh) | Wood Furniture Finishing and Cleaning Operations. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(jjj) | $NO_X$ Emissions from Electric Utility Steam Generating Units. | 7/17/02 | 7/9/03, 68 FR 40789 | |
| 391–3–1–.02(2)(kkk) | VOC Emissions from Aerospace Manufacturing and Rework Facilities. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(lll) | $NO_X$ Emissions from Fuel-burning Equipment. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(mmm) | $NO_X$ Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(nnn) | $NO_X$ Emissions from Large Stationary Gas Turbines. | 2/16/00 | 7/10/01, 66 FR 35906 | |
| 391–3–1–.02(2)(ooo) | Heavy-Duty Diesel Engine Requirements. | 12/28/01 | 7/11/02, 67 FR 45909 | |
| 391–3–1–.02(3) | Sampling | 6/15/98 | 12/2/99, 64 FR 67491 | |
| 391–3–1–.02(4) | Ambient Air Standards | 1/9/91 | 12/14/92, 57 FR 58989 | |
| 391–3–1–.02(5) | Open Burning | 1/8/05 | 8/26/05, 70 FR 50199 | |
| 391–3–1–.02(6) | Source Monitoring | 12/28/00 | 7/11/02, 67 FR 45909 | |
| 391–3–1–.02(7) | Prevention of Significant Deterioration of Air Quality (PSD). | 6/15/98 | 12/2/99, 64 FR 67491 | |
| 391–3–1.02(11) | Compliance Assurance Monitoring. | 6/15/98 | 12/2/99, 64 FR 67491 | |

EPA APPROVED GEORGIA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| 391–3–1–.02(12) | Clean Air Interstate Rule $NO_X$ Annual Trading Program. | 2/28/07 | 10/9/07, 72 FR 57202 | |
| 391–3–1–.02(13) | Clean Air Interstate Rule $SO_2$ Annual Trading Program. | 2/28/07 | 10/9/07, 72 FR 57202 | |
| 391–3–1–.03 | Permits | 7/8/04 | 5/9/05, 70 FR 24310 | Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits are not federally approved. |
| 391–3–1–.04 | Air Pollution Episodes | 11/20/75 | 8/20/76, 41 FR 35184 | |
| 391–3–1–.05 | Regulatory Exceptions | 11/22/92 | 2/2/96, 61 FR 3819 | |
| 391–3–1–.07 | Inspections and Investigations | 11/20/75 | 8/20/76, 41 FR 35184 | |
| 391–3–1–.08 | Confidentiality of information | 11/20/75 | 8/20/76, 41 FR 35184 | |
| 391–3–1–.09 | Enforcement | 11/22/92 | 2/2/96, 61 FR 3819 | |
| 391–3–1–.10 | Continuance of Prior Rules | 11/22/92 | 2/2/96, 61 FR 3819 | |
| 391–3–20 | Enhanced Inspection and Maintenance. | 12/28/08 | 4/17/09, 74 FR 17783 | |
| 391–3–22 | Clean Fueled Fleets | 6/15/98 | 12/2/99, 64 FR 67491 | |

(d) *EPA-Approved State Source specific requirements.*

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| Georgia Power Plant Bowen | EPD–AQC–180 | 11/17/80 | 8/17/81, 46 FR 41498. | |
| Georgia Power Plant Harllee Branch. | 4911–117–6716–0 | 4/23/80 | 5/5/81, 46 FR 25092. | |
| ITT Rayonier, Inc. | 2631–151–7686–C | 11/4/80 | 8/14/81, 46 FR 41050. | |
| Georgia Power Plant Bowen | EPD–AQC–163 | 5/16/79 | 1/3/80, 45 FR 781. | |
| Union Camp | 2631–025–7379–0 | 12/18/81 | 4/13/82, 47 FR 15794. | |
| Blue Bird Body Company | 3713–111–8601 | 1/27/84 | 1/7/85, 50 FR 765. | |
| Plant McDonough | 4911–033–5037–0 conditions 10 through 22. | 12/27/95 | 3/18/99, 64 FR 13348. | |
| Plant Yates | 4911–038–4838–0 conditions 19 through 32. | 12/27/95 | 3/18/99, 64 FR 13348. | |
| Plant Yates | 4911–038–4839–0 conditions 16 through 29. | 12/27/95 | 3/18/99, 64 FR 13348. | |
| Plant Yates | 4911–038–4840–0 conditions 16 through 29. | 12/27/95 | 3/18/99, 64 FR 13348. | |
| Plant Yates | 4911–038–4841–0 conditions 16 through 29. | 12/27/95 | 3/18/99, 64 FR 13348. | |
| Plant Atkinson | 4911–033–1321–0 conditions 8 through 13. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Plant Atkinson | 4911–033–1322–0 conditions 8 through 13. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Plant Atkinson | 4911–033–6949 conditions 5 through 10. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Plant Atkinson | 4911–033–1320–0 conditions 8 through 13. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Plant Atkinson | 4911–033–1319–0 conditions 8 through 13. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Plant McDonough | 4911–033–6951 conditions 5 through 10. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Atlanta Gas Light Company | 4922–028–10902 conditions 20 and 21. | 11/15/94 | 3/18/99, 64 FR 13348. | |

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS—Continued

| Name of source | Permit No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| Atlanta Gas Light Company | 4922–031–10912 conditions 27 and 28. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Austell Box Board Corporation | 2631–033–11436 conditions 1 through 5. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Emory University | 8922–044–10094 conditions 19 through 26. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| General Motors Corporation | 3711–044–11453 conditions 1 through 6 and Attachment A. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Georgia Proteins Company | 2077–058–11226 conditions 16 through 23 and Attachment A. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Owens-Brockway Glass Container, Inc. | 3221–060–10576 conditions 26 through 28 and Attachment A. | 11/15/94 | 3/18/99, 64 FR 13348. | |
| Owens-Corning Fiberglass Corporation. | 3296–060–10079 conditions 25 through 29. | 11/15/94 | 3/18/99, 64 FR 13348. | |

(e) *EPA-Approved Georgia non-regulatory provisions.*

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/ effective date | EPA approval date |
|---|---|---|---|
| 1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. | Atlanta Metropolitan Area | 11/15/93 and amended on 6/17/96 | 3/18/99 and 4/26/99. |
| 2. Clean Fuel Vehicles Revolving Loan Program. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 3. Regional Commute Options Program and HOV Marketing Program. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 4. HOV lanes on I–75 and I–85 | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 5. Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 6. MARTA Express Bus routes (15 buses) | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 7. Signal preemption for MARTA routes #15 and #23. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 8. Improve and expand service on MARTA's existing routes in southeast DeKalb County. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 9. Acquisition of clean fuel buses for MARTA and Cobb County Transit. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 10. ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 11. Upgrading, coordination and computerizing intersections. | Atlanta Metropolitan Area | 6/17/96 | 4/26/99. |
| 12. Georgia Interagency Transportation Conformity Memorandum of Agreement, except for the following sections: Section 103(4)(d); Section 105(e); Section 106(c); Section 110(c)(1)(ii); Section 110(c)(2)(ii); Section 110(d)(2)(i); Section 110(d)(3)(i); Section 110(e)(2)(i); Section 110(e)(3)(i); Section 119(e)(1); Section 119b(a)(2); Section 130(1); and Section 133. | Atlanta Metropolitan Area | 2/16/99 | 11/26/02. |
| 13. Atlantic Steel Transportation Control Measure. | Atlanta Metropolitan Area | 3/29/00 | 8/28/00. |
| 14. Procedures for Testing and Monitoring Sources of Air Pollutants. | Atlanta Metropolitan Area | 7/31/00 | 7/10/01. |
| 15. Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications. | Atlanta Metropolitan Area | 9/20/00 | 7/10/01. |
| 16. Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391–3–1–.02(2)(bbb). | Atlanta Metropolitan Area | 5/31/00 | 2/22/02. |
| 17. Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000. | Atlanta Metropolitan Area | 11/9/01 | 2/22/02. |
| 18. Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area. | Atlanta Metropolitan Area | 7/17/01 | 5/7/02. |
| 19. Post-1999 Rate of Progress Plan | Atlanta Metropolitan Area | 12/24/03 | 7/19/04, 69 FR 42884. |

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/ effective date | EPA approval date |
|---|---|---|---|
| 20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area. | Atlanta 1-hour ozone severe nonattainment area. | 6/30/04 | 6/14/05, 70 FR 34358. |
| 21. Atlanta 1-hour ozone attainment area 2015 maintenance plan. | Atlanta severe 1-hour ozone maintenance area. | 2/1/05 | 6/14/05, 70 FR 34660. |
| 22. Attainment Demonstration for the Chattanooga Early Action Area. | Walker and Catoosa Counties | 12/31/04 | 8/26/05, 70 FR 50199. |
| 23. Attainment Demonstration for the Lower Savannah-Augusta Early Action Compact Area. | Columbia and Richmond Counties | 12/31/04 | 8/26/05, 70 FR 50195. |
| 24. Alternative Fuel Refueling Station/Park and Ride Transportation Center, Project DO–AR–211 is removed. | Douglas County, GA | 9/19/06 | 11/28/06, 71 FR 68743. |
| 25. Macon 8-hour Ozone Maintenance Plan | Macon, GA encompassing a portion of Monroe County. | 6/15/07 | 9/19/07, 72 FR 53432. |
| 26. Murray County 8-hour Ozone Maintenance Plan. | Murray County | 6/15/07 | 10/16/07, 72 FR 58538. |
| 27. Atlanta Early Progress Plan | Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties. | 1/12/07 | 2/20/08, 73 FR 9206. |

[FR Doc. 2010–2573 Filed 2–5–10; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8119]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region II** | | | | |
| New York: | | | | |
| Cincinnatus, Town of, Cortland County | 360177 | July 7, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | March 2, 2010 .. | March 2, 2010 |
| Cortland, City of, Cortland County ..... | 360178 | February 3, 1975, Emerg; August 15, 1983, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Cortlandville, Town of, Cortland County | 360179 | June 24, 1975, Emerg; August 15, 1983, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Cuyler, Town of, Cortland County ..... | 361386 | June 6, 1977, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Freetown, Town of, Cortland County .... | 361325 | June 19, 2007, Emerg; N/A, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Harford, Town of, Cortland County ..... | 360180 | June 26, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Homer, Town of, Cortland County ..... | 360181 | January 15, 1975, Emerg; August 15, 1983, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Homer, Village of, Cortland County ..... | 360182 | October 10, 1974, Emerg; August 15, 1983, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Lapeer, Town of, Cortland County ..... | 361326 | November 4, 1976, Emerg; July 20, 1984, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Marathon, Village of, Cortland County .. | 360183 | November 21, 1974, Emerg; October 15, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| McGraw, Village of, Cortland County .... | 360184 | March 12, 1975, Emerg; December 1, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Preble, Town of, Cortland County ..... | 360185 | June 19, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Scott, Town of, Cortland County ..... | 361328 | December 17, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Solon, Town of, Cortland County ..... | 361329 | February 2, 1976, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Taylor, Town of, Cortland County ..... | 361330 | May 19, 1977, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Truxton, Town of, Cortland County ..... | 360186 | September 12, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Virgil, Town of, Cortland County ..... | 360187 | March 31, 1975, Emerg; May 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Willet, Town of, Cortland County ..... | 361331 | January 21, 1977, Emerg; July 20, 1984, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| **Region II** | | | | |
| West Virginia: Franklin, Town of, Pendleton County. | 540154 | July 2, 1975, Emerg; September 1, 1987, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| **Region IV** | | | | |
| Mississippi: | | | | |
| Forrest County, Unincorporated Areas | 280052 | March 6, 1975, Emerg; April 2, 1990, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Hattiesburg, City of, Forrest and Lamar Counties. | 280053 | April 3, 1970, Emerg; April 3, 1970, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Lamar County, Unincorporated Areas ... | 280304 | April 16, 1979, Emerg; April 2, 1990, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Lumberton, City of, Lamar and Pearl River Counties. | 280337 | N/A, Emerg; February 26, 2009, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Petal, City of, Forrest County ..... | 280260 | September 27, 1974, Emerg; April 15, 1980, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Purvis, Town of, Lamar County ..... | 280318 | May 14, 1980, Emerg; March 1, 1987, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Sumrall, Town of, Lamar County ..... | 280326 | April 22, 1983, Emerg; August 19, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Tennessee: Fentress County, Unincorporated Areas. | 470343 | November 30, 2006, Emerg; April 1, 2007, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| **Region V** | | | | |
| Ohio: | | | | |
| Camden, Village of, Preble County ..... | 390461 | June 28, 1984, Emerg; June 28, 1984, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Coshocton, City of, Coshocton County | 390089 | July 24, 1975, Emerg; December 18, 1986, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Coshocton County, Unincorporated Areas. | 390765 | February 28, 1977, Emerg; February 4, 1987, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Eaton, City of, Preble County ..... | 390462 | February 14, 1975, Emerg; April 15, 1981, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| New Paris, Village of, Preble County .... | 390463 | March 3, 1975, Emerg; April 15, 1981, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Preble County, Unincorporated Areas .. | 390460 | February 12, 1982, Emerg; February 12, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Warsaw, Village of, Coshocton County | 390733 | August 26, 1977, Emerg; September 1, 1987, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| West Alexandria, Village of, Preble County. | 390905 | N/A, Emerg; May 21, 2001, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| West Lafayette, Village of, Coshocton County. | 390814 | August 26, 1977, Emerg; March 22, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Wisconsin: | | | | |
| Bloomer, City of, Chippewa County ..... | 550042 | March 20, 1975, Emerg; August 19, 1991, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Cadott, Village of, Chippewa County .... | 550043 | January 23, 1975, Emerg; March 5, 1996, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Chippewa County, Unincorporated Areas. | 555549 | March 26, 1971, Emerg; June 22, 1973, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Chippewa Falls, City of, Chippewa County. | 550044 | April 16, 1971, Emerg; September 1, 1977, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Cornell, City of, Chippewa County ..... | 550045 | September 25, 1974, Emerg; September 28, 1990, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Eau Claire, City of, Chippewa and Eau Claire Counties. | 550128 | March 19, 1971, Emerg; June 1, 1977, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Stanley, City of, Chippewa and Clark Counties. | 550047 | April 1, 1975, Emerg; September 18, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| **Region VI** | | | | |
| Arkansas: | | | | |
| Atkins, City of, Pope County ..... | 050304 | August 7, 1975, Emerg; July 6, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Dover, City of, Pope County ..... | 050321 | May 24, 1976, Emerg; March 15, 1983, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| London, Town of, Pope County ..... | 050340 | September 17, 1975, Emerg; July 13, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Pope County, Unincorporated Areas .... | 050458 | April 8, 2005, Emerg; July 1, 2009, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Pottsville, Town of, Pope County ..... | 050277 | August 26, 1976, Emerg; April 15, 1982, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Russellville, City of, Pope County ..... | 050178 | July 17, 1970, Emerg; July 18, 1970, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Louisiana: | | | | |
| Cotton Valley, Town of, Webster Parish | 220322 | December 21, 1978, Emerg; October 15, 1985, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |
| Cullen, Town of, Webster Parish ..... | 220235 | April 30, 1975, Emerg; February 12, 1979, Reg; March 2, 2010, Susp. | .....do* ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Doyline, Village of, Webster Parish | 220236 | July 21, 1978, Emerg; September 18, 1979, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Minden, City of, Webster Parish | 220237 | December 17, 1974, Emerg; July 18, 1985, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Sibley, Village of, Webster Parish | 220258 | May 16, 1980, Emerg; July 18, 1985, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Springhill, City of, Webster Parish | 220238 | March 12, 1975, Emerg; June 15, 1981, Reg; March 2, 2010, Susp. | .....do* | Do. |
| **Region X** | | | | |
| Oregon: | | | | |
| Amity, City of, Yamhill County | 410250 | May 20, 1975, Emerg; December 1, 1981, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Carlton, City of, Yamhill County | 410251 | May 6, 1975, Emerg; June 30, 1976, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Dayton, City of, Yamhill County | 410252 | June 4, 1975, Emerg; June 1, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Dundee, City of, Yamhill County | 410253 | April 23, 1975, Emerg; March 1, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Lafayette, City of, Yamhill County | 410254 | May 20, 1975, Emerg; June 15, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| McMinnville, City of, Yamhill County | 410255 | July 22, 1975, Emerg; December 1, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Newberg, City of, Yamhill County | 410256 | August 5, 1974, Emerg; March 1, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Sheridan, City of, Yamhill County | 410257 | January 21, 1975, Emerg; August 1, 1980, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Willamina, City of, Yamhill County | 410258 | January 21, 1975, Emerg; March 15, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Yamhill, City of, Yamhill County | 410259 | June 30, 1975, Emerg; March 1, 1982, Reg; March 2, 2010, Susp. | .....do* | Do. |
| Yamhill County, Unincorporated Areas | 410249 | May 28, 1974, Emerg; September 30, 1983, Reg; March 2, 2010, Susp. | .....do* | Do. |

*do=Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 2, 2010.

**Sandra K. Knight,**

*Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010–2615 Filed 2–5–10; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. NHTSA–2009–0156]**

**RIN 2127–AK57**

## Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document provides the agency's response to petitions for reconsideration of a November 12, 2008 final rule that amended the child restraint systems (CRSs) prescribed in Appendix A of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection." The final rule established a new appendix, "Appendix A–1," which effectively deleted seven older CRSs, added five new CRSs, and provided cosmetic replacements for seven others. Today's response grants some aspects of two of the petitions. All other requests are denied.

**DATES:** This final rule is effective April 9, 2010. If you wish to petition for reconsideration of this rule, your petition must be received by March 25, 2010.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Ms. Carla Rush, NHTSA Office of Crashworthiness Standards, telephone 202–366–1740, fax 202–366–2739. For legal issues, you may contact Ms. Deirdre Fujita, NHTSA Office of Chief Counsel, telephone 202–366–2992, fax 202–366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Overview

This document responds to petitions for reconsideration of a November 12, 2008 final rule [1] that updated Appendix A of FMVSS No. 208. The appendix lists CRSs that the agency uses in compliance testing of advanced air bag systems. The November 12, 2008 final rule replaced a number of older CRSs with those that are more available and more representative of the CRSs currently on the market. Today's document grants a petition to exclude small vehicle manufacturers from the phase-in schedule of the final rule, grants the Alliance's request to change the car bed model number designation, and adds the Evenflo Tribute 381xxx to the appendix. All other requests are denied.

## II. Background

On May 12, 2000, NHTSA issued a final rule for advanced air bags ("Advanced Air Bag Rule") that amended FMVSS No. 208 to, among other things, minimize injuries to small adults and young children due to air bag deployment.[2] Under the Advanced Air Bag Rule, in order to minimize the risk to infants and small children from deploying air bags, vehicle manufacturers may suppress an air bag in the presence of a child restraint system (CRS) or provide a low risk deployment (LRD) system. To minimize the risk to children, manufacturers relying on an air bag suppression or LRD system must ensure that the vehicle complies with the suppression or LRD requirements when tested with the CRSs specified in Appendix A of the standard. As part of ensuring the robustness of automatic air bag suppression and LRD systems, the CRSs in the appendix represent a large portion of the CRS market and CRSs with unique size and weight characteristics. NHTSA stated in the Advanced Air Bag Rule that the list will be updated periodically to subtract restraints that are no longer in production and to add new restraints (65 FR at 30724).

On November 12, 2008, the agency published a final rule that updated Appendix A to replace a number of older CRSs with those that were more available and more representative of the CRSs currently on the market.[3] The final rule continued to call the current appendix "Appendix A," and established an "Appendix A–1" consisting of the updated appendix. The revisions made to establish Appendix A–1 included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. The final rule phased-in the use of the Appendix A–1 CRSs in compliance testing. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 are subject to testing by NHTSA using Appendix A–1, and all vehicles tested by NHTSA that are manufactured on or after September 1, 2010 are subject to testing using Appendix A–1.

On May 4, 2009, the agency denied a petition for rulemaking from the Alliance that requested, among other matters, that NHTSA commit to amending the list of child restraints in Appendix A every three years and allow manufacturers the option of certifying vehicles to any edition of Appendix A for five model years after the edition first becomes effective.[4] We denied the petition because the requests were not conducive to maintaining the appendix, to ensuring child restraints are representative of the current fleet for testing with advanced air bag systems, and were unnecessarily restrictive.

## III. Petitions for Reconsideration

The agency received petitions for reconsideration of the November 12, 2008 final rule from: The Alliance of Automobile Manufacturers (Alliance),[5] Ford Motor Company (Ford), Evenflo Company, Incorporated (Evenflo), IEE S.A. (IEE), and Vehicle Services Consulting, Inc. (VSCI). The issues raised by the petitioners are summarized below.

*Lead time and phase-in.* The final rule specified that manufacturers must begin certifying 50 percent of their vehicles manufactured on or after September 1, 2009 to Appendix A–1 and all vehicles manufactured on or after September 1, 2010 to Appendix A–1. The Alliance, Ford, IEE and VSCI asked for changes to the phase-in schedule.

*Positioning procedure for car bed testing.* The final rule made no change to the procedures for conducting testing with the newborn infant dummy installed in the car bed. The Alliance requested that the agency provide a procedure for positioning the infant dummy in the car bed in FMVSS No. 208.

*Changes to car bed model number designation.* The final rule adopted the Angel Guard Angel Ride Car Bed AA2403FOF in the final rule. The Alliance requested that the agency change the model designation to be less specific.

*Replacement seats.* The final rule revisions to the appendix included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. Evenflo petitioned for removal of four Evenflo-manufactured seats and suggested the incorporation of replacement seats that are currently in production.

In addition to the petition for reconsideration issues, the Alliance requested clarification on the use/removal of three CRSs.

## IV. Final Rule; Agency Response to Petitions

*a. Lead Time and Phase-In*

The November 2008 final rule provided a two-year phase-in, such that 50 percent of vehicles manufactured on or after September 1, 2009 must be certified as meeting FMVSS No. 208 when tested with the CRSs in the revised Appendix A (Appendix A–1), and all vehicles manufactured on or after September 1, 2010 must be so certified. Four organizations, the Alliance, Ford, IEE, and VSCI, submitted petitions for reconsideration of the final rule's lead time and phase-in.

The Alliance stated that the lead time specified in the final rule would impose significant cost burden on the industry without any safety benefit, which it said, is especially problematic for them now because the financial resources of the industry are under tremendous strain. The Alliance stated that many manufacturers have already certified their model year 2010 vehicles to the existing Appendix A and that the lead-time and phase-in contained in the final rule would require a costly recertification of those vehicles. In a February 27, 2009 letter to the agency, the Alliance provided supplemental information on its petition. It estimated that recertifying vehicles in accordance with the phase-in schedule set forth in the final rule would lead to aggregate incremental costs for five companies to be $526,120 from that date until September 1, 2009 and an additional

[1] 73 FR 66786; Docket No. NHTSA–08–0168.

[2] 65 FR 30680; Docket No. NHTSA–00–7013; responses to petitions for reconsideration, 66 FR 65376; Docket No. NHTSA 01–11110, 66 FR 65376; Docket No. NHTSA 01–11110.

[3] 73 FR 66786; Docket No. NHTSA–2008–0168.

[4] 84 FR 20445; Docket No. NHTSA–2009–0064.

[5] Alliance members at the time of the petition included: BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar/Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi, Porsche, Toyota, and Volkswagen.

$679,720 between September 1, 2009 and September 1, 2010. The Alliance stated in its petition that the certification testing specified in the final rule can require in excess of 1,500 individual child restraint installations, taking over 20 days to complete with high confidence. Based on this extensive testing, the Alliance stated that the burden placed on industry is very significant and there is little to no safety benefit estimated. Therefore, the Alliance petitioned that NHTSA postpone and extend the phase-in to three years on a schedule of 20 percent of vehicles built on or after September 1, 2010, 50 percent of vehicles built on or after September 1, 2011 and 100 percent of vehicles built on or after September 1, 2012.

Ford, an Alliance member, also stated that the lead time and phase-in schedule is not sufficient. Ford submitted confidential information detailing a typical vehicle test plan with associated costs to conduct tests necessary to demonstrate compliance with the passenger air bag suppression requirements of FMVSS No. 208.

IEE petitioned for a one-year delay of the current phase-in schedule. IEE stated that it has been the agency's position that the compliance date for changes to Appendix A would be the next model year introduced one year after publication of a final rule modifying Appendix A. IEE stated that NHTSA did not publish the final rule modifying Appendix A before September 1, 2008, and the current final rule only provides 9 months and 18 days, not a full year. IEE stated that "[t]he supplier industry can not start on November 12, 2008 with the system calibration and testing for all vehicle models * * * a manufacturer decision has to be taken first in order that the supplier knows which models to focus on for short-term (September 1, 2009) adaptation, and for which models one more year would be available to guarantee certification." IEE stated that NHTSA's indicant tests cannot conclude that the changes in the CRS characteristics are not significant enough to alter an advanced air bag system's performance. It noted that only four CRSs were used in this indicant testing with seventeen vehicles. IEE stated that a supplier can only decide if the modified Appendix A–1 alters the system's performance, or not, after having tested all Appendix A–1 CRSs on all vehicle models it is equipping. It suggested that only testing a subset of new CRS, and then concluding there would be no issues with all the new CRS would not be acceptable in view of having to guarantee FMVSS No. 208 compliance. IEE stated that NHTSA's indicant testing "can not be used to motivate an earlier compliance."

Finally, VSCI was concerned that there is no provision in the final rule for small volume manufacturers (SVMs), and that the final rule phase-in period should not apply to all SVMs. It noted that there are some SVMs that only sell one model in the U.S., which means under the current final rule, those manufacturers would be required to be 100 percent compliant within the first year without any lead time. VSCI suggested that the agency allow "* * * manufacturers selling fewer than 5,000 vehicles per year in the U.S. * * * [to] wait until the end of the phase-in before having to comply." This provision would allow all SVMs to be 100 percent compliant within two years.

Agency Response

NHTSA is granting the petition to exclude SVMs from the phase-in schedule of the final rule and is denying all other aspects of the petition concerning lead time. The agency agrees that under the final rule, SVMs with only a single model line would have to be fully compliant with Appendix A–1 a year ahead of larger vehicle manufacturers. We believe this would be unduly burdensome on SVMs. Today's final rule is amended such that SVMs selling fewer than 5,000 vehicles per year in the U.S. may certify to either version of Appendix A until the end of the phase-in.

NHTSA is denying the petitions to change the provisions of the final rule lead time and phase-in schedule for other manufacturers. In the November 2008 final rule, the agency stated its belief that the phase-in effectively balanced the competing considerations in updating the appendix, namely, the need to have a representative list that ensures the compatibility of suppression and LRD systems with CRSs in the field, while maintaining some stability to minimize the certification burden on vehicle manufacturers. Based on our analysis of the petitions for reconsideration, we do not agree with the petitioner's requests for additional lead time and extended phase-in. The Alliance's petition for an additional year of lead time would effectively postpone use of the new Appendix A–1 seats for approximately two years and would only require 20% of the fleet to be certified at that time (or 50% under the IEE petition request). We believe that delaying implementation of Appendix A–1 is in conflict with the agency's goal of moving toward a newer version of the Appendix that would better ensure the CRSs are available and representative of those in use. Furthermore, the Alliance's additional request to extend the phase-in for three years on top of the additional year of lead time would compound the delay in implementation of the testing and diminish how representative the child seats are during that time period.

In response to IEE, we note that our decision on lead time and phase-in was only partially based on testing the agency conducted with new vehicles and new child restraints. We acknowledge that our indicant testing was not all-inclusive (i.e., it did not test every type of CRS with every model of vehicle in the current fleet); however, it was considered as an indicator of general performance that could be anticipated by the use of CRSs in Appendix A–1. Our indicant testing used 4 representative CRSs and 17 new vehicles equipped with current suppression systems.[6] The testing identified no compliance issues or challenges with the new seats, and bolstered the agency's expectation that new vehicles would readily identify the CRSs without needing redesign and recalibration. It was also consistent with GM's comments to the notice of proposed rulemaking[7] where GM stated, "Neither our warranty data or the feedback we receive through our continuous and close involvement with the Child Passenger Safety (CPS) community indicates that there are any child restraints in use that do not properly classify in our vehicles when used in the field."

The intention in providing a phase-in in the final rule was, in part, to provide vehicle manufacturers the flexibility of selecting vehicles that could readily comply with the new appendix in the first year and delay more challenging vehicle models, if they existed, to the following years. None of the petitioners provided any evidence that any of the vehicle models would need redesign or recalibration.

We are not persuaded by IEE's arguments for an additional year of lead time because of a perceived conflict between the final rule and the agency's past position on implementation dates, and the fact that the rule only provides 9 months and 18 days for certification. Only half of a vehicle manufacturer's production needs to comply with the first year of the phase-in. Vehicle manufacturers can minimize recertification burdens by certifying their new model year 2010 vehicles to Appendix A–1 to meet the required

[6] See test report provided in the docket for this final rule.

[7] Docket No. NHTSA–2007–28710–0016.

percentage of vehicles that must be certified using Appendix A–1 for the first year of the phase-in. The effective date and phase-in schedule apply to all vehicles, without differentiation between new and "carryover" models (these are vehicles that were previously certified to the existing Appendix A). A manufacturer may choose to have new vehicle models, carryover models, or both, comprise the 50 percent phase-in requirement. The lead time and phase-in schedule adopted in the final rule allow vehicle manufacturers to carryover a large percentage of its vehicles for a year to alleviate recertification burdens.

*b. Positioning Procedure for Car Bed Testing*

The November 12, 2008 final rule did not make amendments to positioning the newborn infant dummy in the car bed. It was also not discussed in the notice of proposed rulemaking or in the comments in response to that notice. Section S20.2.3 of FMVSS No. 208 currently states: "(c) Position the 49 CFR Part 572 Subpart K Newborn Infant dummy in the car bed by following, to the extent possible, the car bed manufacturer's instructions provided with the car bed for positioning infants."

The Alliance petitioned for a new positioning procedure for placing the newborn infant dummy in the Angel Guard Angel Ride AA2403FOF car bed. It noted that when the dummy's head is contained within the car bed, the dummy's legs/feet rest on the opposite edge of the CRS. The Alliance noted that the Angel Guard Angel Ride AA2403FOF car bed is designed for a child up to 5 pounds. The Alliance requested that NHTSA provide a positioning procedure such that the dummy's head is contained inside the CRS and its legs/feet are allowed to rest on the opposite edge of the CRS. The Alliance suggested this could be included in FMVSS No. 208 or included as a footnote to Appendix A–1.

Agency Response

NHTSA is denying the Alliance petition to adopt a positioning procedure for the newborn infant dummy in the car bed. The newborn infant dummy only weighs approximately 7.5 pounds.[8] According to the label on the car bed, the bed can accommodate a child up to 9 pounds. We are also unconvinced that the exact position of the newborn infant dummy in the car bed would have any significant effect on FMVSS No. 208 advanced air bag suppression testing. The distribution of where the newborn infant dummy weight is applied to the seat will not change significantly. The Alliance has not provided any data demonstrating that there are practical issues with the exact positioning of the newborn infant dummy in this car bed and we are unconvinced that sensing systems are not robust enough to accommodate small weight shifts within the carrier.

*c. Changes to Car Bed Model Number Designation*

The final rule adopted the Angel Guard Angel Ride AA2403FOF car bed in Appendix A–1. In its petition, the Alliance noted that the model designation specified in the final rule for this car bed is no longer available. According to the Alliance, it contacted the manufacturer of this product and learned that the first two characters in the model number are for packaging and minor product changes that would not change its expected performance in FMVSS No. 208 low risk deployment and suppression tests. It also learned that the last three characters refer to the specification of fabric color (also not affecting FMVSS No. 208 performance). Therefore, the Alliance petitioned for the model designation for the Angel Guard Angel Ride infant car bed to be changed from AA2403FOF to xx2403xxx.

Agency Response

NHTSA is granting the Alliance's petition to change the car bed model number designation. From our contact with the manufacturer,[9] we learned that the first letter of the model number designates the way in which the car bed was packaged and should not have an influence on the performance of the car bed in FMVSS No. 208 CRS testing. The second letter designates small manufacturing changes that would not affect the footprint, and weight of the seat significantly and the last three letters denote that the CRS had the factory option fabric (FOF) installed. The manufacturer reported that the second letter currently changed due to label changes and a re-designed harness. The label changes were made in response to NHTSA's Ease-of-Use program. Because the letters do not represent any feature of the infant car bed that would affect FMVSS No. 208 CRS testing, the agency agrees with the Alliance that there is no need to specify these designations.

*d. Replacement Seats*

The final rule adopted revisions to the appendix that included the deletion of seven existing CRSs, addition of five new CRSs, and cosmetic replacements for seven existing CRSs. In its petition for reconsideration, Evenflo requested that four Evenflo-manufactured CRSs be removed from Appendix A–1 because they are no longer in production. They include: the Discovery Adjust Right 212, Medallion 254, Right Fit 245, and Tribute V 379xxxx. Evenflo provided three potential replacements for the four CRSs.

Agency Response

The agency is denying the Evenflo petition. With regard to three out of four of the CRSs, these CRSs (Discovery Adjust Right 212, Medallion 254 and Right Fit 245) were not proposed for deletion in the NPRM and subsequently not deleted in the final rule. The agency purposely left these seats effective in the final rule since they were not targeted for immediate replacement at that time. While replacing these CRSs is presently out of scope of this rulemaking, the agency may consider these suggestions in a future update of Appendix A.

The fourth seat, the Evenflo Tribute V 379xxxx, was a new addition to the appendix. Evenflo suggested that the Tribute 381xxxx would be a viable replacement for the Tribute V 379xxxx. According to Evenflo, the latter CRS went out of production in October of 2008 (shortly prior to the publication of the final rule). This request was also made by the Alliance in its petition for reconsideration. The agency is partially granting this request. See Section V.b. of today's document for the agency's response regarding this CRS.

**V. Technical Clarifications**

*a. Evenflo First Choice 204*

The November 12, 2008 final rule regulatory text of Appendix A–1 did not include the Evenflo First Choice 204 and the preamble was silent about its removal. In its petition, the Alliance requested confirmation that the removal of this CRS was intentional since the CRS was not specifically discussed in the NPRM and was not mentioned in the preamble of the final rule.

Agency Response

We confirm that the Evenflo First Choice 204 has been removed and is not included in Appendix A–1. In section II.c. of the NPRM (72 FR at 54407), NHTSA requested comment on changing CRSs in Appendix A other than those proposed to be deleted in section II.a. or added in section II.b. The

[8] *http://www.dentonatd.com/dentonatd/pdf/cami.pdf.*

[9] See the NHTSA ex-parte memo provided in the docket for this final rule.

changes proposed by section II.c were primarily to update older CRSs in the appendix with newer model CRSs that have the same main physical features as the older restraints. TRW commented that either the Evenflo First Choice 204 or the Evenflo Discovery Adjust Right 212 should be deleted because, aside from the latter having a removable base, they are identical seats. The agency agreed to delete the Evenflo First Choice 204 because this child restraint shares the same shell as the Evenflo Adjust Right. Since FMVSS No. 208 CRS testing is done with and without the base attached, testing with the Evenflo Adjust Right in the "no base" mode is the same as testing with the Evenflo First Choice 204. The agency decided to delete the Evenflo First Choice 204 to avoid redundant testing.

*b. Evenflo Tribute V 379xxxx*

In its February 27, 2009 supplement to its petition, the Alliance stated that it learned, subsequent to its December 2008 petition, that the Evenflo Tribute V 379xxxx was no longer in production after October 2008. The Alliance urged NHTSA to confirm that in view of the seat "becoming unavailable" prior to the issuance of the final rule adopting Appendix A–1, vehicle manufacturers will not need to certify compliance of their vehicles using this CRS.[10] It said that the agency stated the following on November 19, 2003 regarding unavailability:

> Even with diligent review of Appendix A, there may be rare occasions when a new addition of the list becomes unavailable or undergoes a significant design change between the time an amendment is proposed and when it is issued as a final rule. Under this limited circumstance, the agency would not use the unavailable or altered CRS for compliance testing and the manufacturers would likewise be relieved of any burden to procure the CRS or use it to test for suppression. 68 FR at 65179, 65188.

Agency Response

The view of the agency expressed in the 2003 statement was explained in and modified by the November 12, 2008 final rule (73 FR at 66795). In the 2008 final rule, NHTSA re-evaluated the statement and determined that it was overtaken by events in today's context. We also determined that the decision as to whether a CRS differs so much on the day of publication of a rule from the CRS that the agency had proposed should be addressed in a rulemaking proceeding. It was not a matter to be assumed that the CRS would be removed from compliance testing. Relatedly, while production of the Evenflo Tribute V 379xxxx ceased in October 2008, no data was provided by the Alliance to suggest that the seats were "unavailable for purchase." Thus, we decline to remove the CRS from the appendix.

That being said, we have decided to grant Evenflo's request to include the Evenflo Tribute 381xxxx in the appendix. Both the Evenflo Tribute V 379xxxx and the Tribute 381xxxx have the same footprint and dimensions. The only minor differences are the internal harness adjuster and the number of adjustments for the shoulder belts and crotch strap. We will not replace the Evenflo Tribute V 379xxxx with the Evenflo Tribute 381xxxx, but will instead allow certification testing to be conducted with either CRS. We are allowing this option in this final rule so as not to penalize manufacturers that diligently procured a sufficient supply of the Evenflo Tribute V 379xxxx for testing and have since certified vehicles to the final rule. The agency will permit this unique option since both CRSs would provide an equivalent level of safety for the purposes of FMVSS No. 208 testing.

*c. Cosco Arriva 22–013PAW*

In its February 27, 2009 supplement to its petition, the Alliance reported that Dorel Juvenile Group (DJG), the manufacturer of the Cosco Arriva 22–013PAW, has indicated that the CRS is no longer in production due to the unavailability of its base, No. 22–999WHO. The Alliance urged NHTSA to confirm that in view of the seat "becoming unavailable" prior to the issuance of the final rule adopting Appendix A–1, vehicle manufacturers will not need to certify compliance of their vehicles using this CRS.

Agency Response

The agency does not concur with the Alliance's reliance on the statement of the 2003 final rule for the reasons given above regarding the Cosco Arriva 22–013PAW. Further, the agency received information from the manufacturer that the base, No. 22–999WHO would be put back in production for FMVSS No. 208 testing.[11] Accordingly, the request is denied.

[10] As discussed in Section IV.d. of this document, Evenflo also petitioned for this seat to be replaced with the Evenflo Tribute 381xxxx.

[11] See the NHTSA ex-parte memo provided in the docket for this final rule.

## VI. Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The costs and benefits of advanced air bags are discussed in the agency's Final Economic Assessment for the May 2000 final rule (Docket 7013). The cost and benefit analysis provided in that document would not be affected by this final rule, since this final rule only slightly adjusts the phase-in schedule for SVMs and makes small adjustments to the CRSs used in test procedures of that final rule. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* NHTSA has evaluated the effects of this action on small entities. I hereby certify that this final rule will not have a significant impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, multistage manufacturers and alterers, some of which qualify as small entities. However, the entities that qualify as small businesses will not be significantly affected by this rulemaking because this rule adjusts the phase-in schedule for them, which is a positive impact. These entities are already required to comply with the advanced air bag requirements, so this final rule does not establish new requirements.

*Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking does not have federalism implications because this final rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Further, no consultation is needed to discuss the issue of preemption in connection with today's rulemaking. The issue of preemption can arise in connection with NHTSA rules in two

ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of an NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

*National Environmental Policy Act*

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The November 12, 2008 final rule contained a collection of information because of the phase-in reporting requirements. There was no burden to the general public.

The November 12, 2008 final rule required manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,856 kg (8,500 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the FMVSS No. 208 requirements using Appendix A–1 during the phase-in of those requirements. The purpose of the reporting and recordkeeping requirements is to assist the agency in determining whether a manufacturer of vehicles has complied with the requirements during the phase-in period. Today's final rule has no further reporting or recordkeeping requirements.

*National Technology Transfer and Advancement Act*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

There are no voluntary consensus standards that address the CRSs that should be included in Appendix A.

*Civil Justice Reform*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation, with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

*Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

*Executive Order 13211*

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

*Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us at the address provided at the beginning of this document.

*Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in

the heading at the beginning of this document to find this action in the Unified Agenda.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

**List of Subjects in 49 CFR Part 571**

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by:
■ • Adding S14.8.5
■ • Revising Appendix A–1

**§ 571.208 Standard No. 208; Occupant crash protection.**

* * * * *

S14.8.5 Until September 1, 2011, manufacturers selling fewer than 5,000 vehicles per year in the U.S. may certify their vehicles as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A. Vehicles manufactured on or after September 1, 2011 by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A–1.

* * * * *

**Appendix A–1 to § 571.208—Selection of Child Restraint Systems**

This Appendix A–1 applies to not less than 50 percent of a manufacturer's vehicles manufactured on or after September 1, 2009 and before September 1, 2010, as specified in S14.8 of this standard. This appendix applies to all vehicles manufactured on or after September 1, 2010.

A. The following car bed, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A–1

| | Manufactured on or after |
|---|---|
| Angel Guard Angel Ride XX2403XXX. | September 25, 2007. |

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A–1

| | Manufactured on or after |
|---|---|
| Century Smart Fit 4543. | December 1, 1999. |
| Cosco Arriva 22–013 PAW and base 22–999 WHO. | September 25, 2007. |
| Evenflo Discovery Adjust Right 212. | December 1, 1999. |
| Graco Infant 8457 ..... | December 1, 1999. |
| Graco Snugride ..... | September 25, 2007. |
| Peg Perego Primo Viaggio SIP IMUN00US. | September 25, 2007. |

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19, or S21. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A–1

| | Manufactured on or after |
|---|---|
| Britax Roundabout E9L02xx. | September 25, 2007. |
| Graco ComfortSport .. | September 25, 2007. |
| Cosco Touriva 02519 | December 1, 1999. |
| Evenflo Tribute V 379xxxx or Evenflo Tribute 381xxxx. | September 25, 2007. |
| Evenflo Medallion 254 | December 1, 1999. |
| Cosco Summit Deluxe High Back Booster 22–262. | September 25, 2007. |

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A–1—Continued

| | Manufactured on or after |
|---|---|
| Evenflo Generations 352xxxx. | September 25, 2007. |
| Graco Toddler SafeSeat Step 2. | September 25, 2007. |
| Graco Platinum Cargo. | September 25, 2007. |
| Cosco High Back Booster 22–209. | September 25, 2007. |

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A–1

| | Manufactured on or after |
|---|---|
| Britax Roadster 9004 | December 1, 1999. |
| Graco Platinum Cargo. | September 25, 2007. |
| Cosco High Back Booster 22–209. | September 25, 2007. |
| Evenflo Right Fit 245 | December 1, 1999. |
| Evenflo Generations 352xxxx. | September 25, 2007. |
| Cosco Summit Deluxe High Back Booster 22–262. | September 25, 2007. |

Issued: January 25, 2010.

**David L. Strickland,**

*Administrator.*

[FR Doc. 2010–2610 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 0810141351–9087–02]**

**RIN 0648–XU22**

## Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2010 A season allocation of Atka mackerel in these areas allocated to vessels participating in the BSAI trawl limited access fishery.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 3, 2010, through 1200 hrs, A.l.t., September 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 908–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 A season allocation of Atka mackerel allocated to vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea was established as 604 metric tons (mt) by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 1, 2010. The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 2, 2010.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–2670 Filed 2–3–10; 4:15 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 75, No. 25
Monday, February 8, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1208

**[Doc. No. AMS–FV–07–0077; FV–07–705–PR–2A]**

**RIN 0581–AC79**

## Proposed Processed Raspberry Promotion, Research, and Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This rule proposes the establishment of an industry-funded promotion, research, and information program for processed raspberries. The proposed program, Processed Raspberry Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Washington Red Raspberry Commission (WRRC). Under the Proposed Order, producers of raspberries for processing and importers of processed raspberries would pay an assessment of up to one cent per pound, with the initial assessment rate being one cent per pound, which would be paid to the proposed National Processed Raspberry Council (Council). Producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries, respectively, would be exempt from the assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The Department is conducting an initial referendum to ascertain whether the persons to be covered by and assessed under the Proposed Order favor the implementation of the program prior to it going into effect. In addition, USDA is announcing that the referendum will be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor the implementation of the Proposed Order. The Proposed Order would be implemented if it is approved by a majority of producers and importers voting in the referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

**DATES:** The voting period is March 22, 2010 through April 2, 2010. To be eligible to vote, producers must have produced 20,000 pounds of raspberries for processing and importers must have imported 20,000 pounds of processed raspberries during the representative period from January 1, 2008 through December 31, 2008. Ballots will be mailed to all known producers of raspberries for processing and importers of processed raspberries, on or before March 8, 2010. Ballots must be received by the referendum agents no later than the close of business 4:30 p.m. (Eastern Time) on April 2, 2010.

**ADDRESSES:** Copies of the Proposed Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; telephone: (202) 720–9915 or (888) 720–9917 (toll free); or facsimile: (202) 205–2800; or can be viewed at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 or (888) 720–9917 (toll free); or facsimile: (202) 205–2800; or e-mail: *Kimberly.Coy@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

As part of this rulemaking, a proposed rule was published in the **Federal Register** on April 9, 2009 [74 FR 16289], with a 60-day comment period, which closed on June 8, 2009. Twenty-one comments were received.

### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that the 1996 Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

### Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Executive Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

The WRRC and the Oregon Raspberry and Blackberry Commission (ORBC), the principal producers of processed raspberries, both administer State marketing orders, which require all producers of raspberries to pay assessments to support the health of

their respective industries. Both the WRRC and ORBC invest funds into research programs at their land-grant universities and other research institutions to study disease, pest control, and varietal development. In addition to developing and funding production research, they also fund marketing and promotion programs and seek to foster education and communication between producers. However, WRRC stated that it has not been able to generate the funds necessary, nor has the ORBC or international raspberry organizations, to support the marketing efforts needed to help expand processed raspberry consumption and increase the demand for processed raspberries. In order to manage increased production, increased competition, and changing consumer habits, the WRRC believes that a more extensive marketing program is needed. The WRRC and ORBC believe that a national research and promotion program would fund the promotional aspect necessary to stay competitive and would place all domestic producers and importers on an equal playing field with each investing a fair share in promoting processed raspberries. If a national processed raspberry program is established, the WRRC and ORBC will continue to fund processed raspberry research in areas not likely to be the focus of the national program.

In accordance with the 1996 Act, this proposed rule would not preempt any State-legislated programs. Further, section 1208.52(h) of the Proposed Order provides for credit of assessments for those individuals who contribute to local, regional, or State organizations that engage in similar generic research, promotion, and information programs as partial fulfillment of assessments due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States.

The proposed program is not intended to duplicate any State program. Considerable attention is being made to involve producers in discussions regarding future program development and administration and what the State commissions would look like subsequent to the implementation of a national program. It is expected that farm related activities, such as production research, would continue to be funded by the State organizations and market development functions, such as nutritional research and marketing programs, would shift to the Proposed Order.

Not only were the States informed throughout the development of the national program, they were instrumental in the processed raspberry industry's decision to institute a national program.

In 2007, representatives from the WRRC were among other raspberry industry representatives who met with AMS representatives to discuss the possibility of implementing a national processed raspberry promotion, research, and information program. WRRC representatives participated in the development of the provisions of the Proposed Order during these meetings and with direct communication with the Oregon Raspberry and Blackberry Commission (ORBC).

**Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7.0 million. Under these criteria, the majority of the producers and handlers that would be affected by this Proposed Order would be considered small entities, while most importers would not. Further, an estimated ten qualified organizations certified by the Secretary for nomination purposes, would be expected to generally consist of entities reflecting such sizes also. Producers and importers of less than 20,000 pounds per year of raspberries for processing and processed raspberries respectively would be exempt under this Proposed Order. Five organic producers and importers are also expected to be exempt from assessments. The number of entities assessed under the program would be around 245. Estimated revenue is expected at $1.2 million of which 43 percent is expected from imported product and 57 percent from domestic product.

According to the WRRC, in 2006, there were approximately 195 producers of raspberries for processing and 34 processors (first handlers) of processed raspberries in Oregon and Washington States, which are the principal growing areas in the United States for raspberries destined for processing. Approximately 95 percent of the producers and 100 percent of the raspberry processors qualified under the definition for small business owners. Although California is a significant producer of raspberries, virtually all harvested product is destined for the fresh market. In 2006, there were approximately 50 importers of processed raspberries. Based on the U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, in 2006 two countries accounted for 96 percent of the processed raspberries imported into the United States. These countries and their share of the imports are: Chile (78 percent) and Canada (18 percent).

The 1996 Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

*The WRRC submitted this Proposed Order to:* (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer education regarding processed raspberries; (2) strengthen the position of the processed raspberry industry; and (3) maintain, develop, and expand existing markets for processed raspberries.

While the Proposed Order would impose certain recordkeeping requirements on first handlers, this information could be compiled from records currently maintained. First handlers would collect and remit the assessments on domestic raspberries for processing to the Council. First handler responsibilities would include accurate recordkeeping and accounting on all raspberries purchased or contracted for processing including the number of pounds handled, the names of their producers, and the dates raspberries were purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such records must be retained for at least two years. This information is already maintained as a normal business practice. In addition, most of these entities currently remit assessments under either the Washington or Oregon State programs, the additional recordkeeping and submission impact would be minimal.

There is also a minimal paperwork burden on producers. The Proposed Order would require producers to keep records and to provide information to

the Council or the Department when requested. However, it is not anticipated that producers would be required to submit forms to the Council other than for nomination to the Council. If, for example, the Council needs information from a producer as part of the Council's compliance program, the information would need to be obtained through an audit of the producer's records instead of having the producer complete and submit paperwork.

In addition, there is a minimal burden on importers. The import assessments would be collected by U.S. Customs and Border Protection (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the Council or the Secretary of Agriculture (Secretary) when requested. However, it is not anticipated that importers would be required to submit forms to the Council for assessment collection because Customs conducts recordkeeping and assessment remittance at the time of product entry into the United States. Importers who seek nomination to serve on the Council would be required to complete a background form, which would be submitted to the Secretary.

Foreign producers from countries exporting a minimum of three million pounds of raspberries for processing based on a three-year average to the U.S. and at-large members seeking nomination to serve on the Council would also be required to complete a background form, which would be submitted to the Secretary.

The estimated annual cost of providing the information to the Council by an estimated 297 respondents (195 producers, 50 importers, 34 first handlers/processors, 2 foreign producers, 5 organic producers and importers, 10 certified organizations (for nomination purposes), and 1 at-large member) would be $9,141.

Section 518 of the 1996 Act provides for referenda to ascertain approval of the Proposed Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Proposed Order. An initial referendum will be conducted prior to putting this Proposed Order in effect. A referendum order is published herein. The Proposed Order also provides for approval in a referendum to be based upon approval by a majority of those persons voting in the referendum. Every seven years, the Department shall conduct a referendum to determine whether producers of raspberries for processing and importers of processed raspberries favor the continuation, suspension, or termination of the Proposed Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent or more of all eligible producers of raspberries for processing and processed raspberries importers required to pay assessments; or if the Council requests that the Secretary hold a referendum.

The United States is among the leading producers of raspberries. Raspberries are grown in 49 states and are harvested late June to mid August. The 2007 Census of Agriculture indicates that about 80 percent of the U.S. raspberry acreage was in California, Oregon, and Washington.

According to the United States Department of Agriculture's National Agricultural Statistics Service (NASS) and the Foreign Agricultural Service, in 2008, 119,270 million pounds of raspberries (fresh) with a combined value approaching $286 million (value at point of first sale) were produced in California, Oregon, and Washington, the three most productive States for growing raspberries in the United States. In 2007, 142,500 million pounds were produced and utilized, at a value of almost $267 million. California's crop is predominately delivered to the fresh market, while Oregon and Washington are the principal producers of processed raspberries.

Domestic production varies from year to year due to climatic conditions and field health. Over the last fifteen years, total domestic production of raspberries delivered to processors in the United States (i.e., production utilized for processing) has increased from 47.5 million pounds in 1991 to almost 62 million pounds in 2007 with most recent years averaging approximately 69 million pounds. Washington continues to be the major supplier of processed raspberries to the domestic market, although its market share declined from 72 percent to 51 percent between 2001 and 2008. In comparison, imported processed raspberries surged from 7.5 to 53.8 million pounds from 1991 to 2005 and then decreased to 45.8 million pounds in 2008. Chile, which is the predominate importer of processed raspberries to the United States, supplied just over 18 percent of the total U.S. market in 2008.

Domestic uses of processed raspberries include further processing into juices, jellies, baked goods, and consumer retailer packs. After averaging approximately 188 million pounds for the period 2006 to 2008, approximately 165 million pounds of processed raspberries produced and imported into the United States in 2008, and 184 million pounds in 2007 were utilized for processing. These totals were calculated by using imports of frozen raspberries (from USDA's Foreign Agricultural Service) and NASS reports of production utilized for processing in Oregon and Washington. Because of the way imports are currently reported, and because of the way NASS reports raspberry data, the totals represent the best information currently available.

The following countries are major exporters of raspberries to the United States: Canada, Chile, China, France, and Poland. Canada and Chile represented 91.5 percent share of total import tonnage in the domestic United States market from 2003 to 2008, with 22 and 69.5 percent respectively.

The same growing conditions and harvesting period apply to the Pacific Northwest and British Columbia, the major raspberry growing region in Canada. Exports of processed frozen raspberries from British Colombia to the United States ranged from 2.9 million metric tons to 5.7 million metric tons over the past five years.

Contra-season raspberry production in the southern hemisphere is primarily located in Chile, with a harvest season beginning in December and continuing into February. However, processed raspberries are imported into the United States throughout the year.

The Proposed Order would authorize a fixed assessment paid by producers of raspberries for processing and importers of processed raspberries at a rate of up to one cent per pound, with the initial assessment rate being one cent per pound. The assessment rate will be reviewed, and increased or decreased as recommended by the Council and approved by the Secretary after the first referendum is conducted as stated in § 1208.71(a). Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department, and will be reviewed, and increased or decreased by the Secretary through rulemaking as recommended by the Council. Any change in the assessment rate shall be announced by the Council at least 30 days prior to going into effect. The maximum assessment rate authorized is one cent per pound.

At the proposed rate of assessment of up to one cent per pound, with the initial assessment rate being one cent per pound, the Council would collect approximately $1.2 million annually based on an estimated 120 million pound supply from domestic raspberries for processing and imports of processed raspberries. The domestic supply represents approximately 57 percent of the total and imports represent 43 percent.

The Proposed Order would exempt producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries respectively. A review of producer delivery statistics from Oregon and Washington States indicate that around 15 percent of all producers would have been exempted from assessment in 2006 from the proposed research and promotion program based on a 20,000 pounds exemption threshold. Also, organic producers and importers would be exempt from assessment. Section 515 of the 1996 Act provides for the establishment of a board or council consisting of producers, importers, and others in the marketing chain as appropriate. The Proposed Order would provide for the establishment of the National Processed Raspberry Council to administer the Proposed Order under AMS oversight. The Secretary would appoint members to the Council from nominees submitted in accordance with the Proposed Order. The WRRC proposed that the Council be composed of 13 members and their alternates. The proposed Council membership is as follows: Six producer members of raspberries for processing from States producing a minimum of three million pounds of raspberries delivered for processing; one producer member of raspberries for processing representing all other States that produce less than the minimum of three million pounds of raspberries delivered for processing; three processed raspberry importer members; two foreign producers from countries exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average; and one at-large member recommended by the Council. The distribution of producer member of raspberries for processing positions among the States producing a minimum of three million pounds of raspberries would be proportional to the average of the total pounds delivered to the processor for processing over the previous three years. The States that provide less than three million pounds will be combined into one region and will have one producer representative.

Under the Proposed Order, the Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. When the Council is first established, four producer members, two importers, one of the two foreign producers, and the at-large member and their respective alternates will be assigned initial terms of three years; and, three producer members, one importer member, and the second foreign producer and their respective alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Members serving an initial term of two years will be eligible to serve a second three-year term to complete their eligibility. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, and a new term will begin on January 1.

Producers and importers would represent those entities in the United States. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

The nominations for the six producer and alternate members from States producing a minimum three year average of three million pounds of raspberries delivered for processing will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States.

For those States producing a minimum three year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be sent to the Council and placed on a ballot which will then be sent to producers in the State for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing a minimum three year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

The distribution of the six producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds produced over the previous three years. For example, if Washington State and Oregon are the only two States producing a minimum of 3 million pounds each, and Washington's previous three year average is 62.4 million pounds and Oregon's previous three year average is 6.7 million pounds with the average total pounds for the previous three years being 69.1 million pounds, Washington would have 90 percent of the production and Oregon would have 10 percent of the production. Therefore, Washington would obtain five out of the six seats and Oregon would receive one seat.

The nominations for the one raspberry producer of raspberries for processing and alternate member, who represents all other States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, which constitutes a region will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States.

For those States producing less than a minimum three year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be sent to the Council and placed on a ballot which will then be sent to producers in the region for a vote. The nominee for member will have received the highest number of votes cast. The person with

the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States. The State Departments of Agriculture would have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Nominations for the three processed raspberry importer member positions and their alternates will be made by qualified national organizations representing importers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified national organization representing importers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing importers must represent a substantial number of importers who market a substantial volume of raspberries for processing; (2) it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry importers' welfare; and (4) it must derive a portion of its operating funds from importers.

If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council, those that imported processed raspberries into the U.S. in the most recent fiscal year, could directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Nominations for the two foreign producer member positions and their alternates will be made by qualified organizations representing foreign producers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified organizations representing foreign producers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations per country to the Secretary for foreign producer positions and the foreign producer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified organization representing foreign producers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing foreign producers must represent a substantial number of foreign producers who market or produce a substantial volume of raspberries for processing; (2) it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry foreign producers' welfare; (4) it must derive a portion of its operating funds from foreign producers; and (5) must be from a country exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average.

If the Department determines that they are no qualified organizations representing foreign producer interests, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

In recommending the at-large member and alternate, the Council can give consideration to nutrition health professionals and others interested in the raspberry industry. Nominations for the at-large member and alternate will be conducted at a Council meeting by the Council staff and shall be submitted by the Council to the Secretary for approval not less than 90 days prior to the expiration of the term of office. Nominations for the initial Council will be handled by the Department.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board or council shall reflect the geographic distribution of the production of the agriculture commodity in the United States and the quantity or value of the agriculture commodity imported into the United States. The Proposed Order states that at least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of processed raspberries and the quantity and source of processed raspberry imports. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic raspberry production and the quantity of imports. Also, if the level of imports increases or decreases importer members and alternates may be added or reduced on the Council. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

The Proposed Order provides that all officers, employees, and agents of the Department and of the Council are required to keep confidential all information obtained from persons subject to the Proposed Order. This information would be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party. However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Proposed Order would be permitted, if the statements do not identify the

information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Proposed Order and a statement of the particular provisions of the Proposed Order violated by the person would be allowed.

Proposed recordkeeping and reporting requirements for the raspberry promotion, research, and information program would be designed to minimize the burden on the raspberry industry.

The estimated total cost of providing information to the Council by all respondents would be $9,141. This total has been estimated by multiplying 277 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

With regard to alternatives to this proposed rule, the 1996 Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the 1996 Act, and other sections provide for alternatives. Section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic activities for those individuals who contribute to other similar generic research, promotion, and information programs at State, regional or local level; and assessment of imports. In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the 1996 Act provides for establishment of a council from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

This proposal includes provisions for both domestic and foreign market expansion and improvement; reserve funds; credits for generic activities; assessments on imports; and an initial referendum to be conducted prior to the Proposed Order going into effect. Approval would be determined by a majority of producers and importers voting for approval.

Similar to WRRC, Oregon also has a state raspberry commission, the Oregon Raspberry and Blackberry Commission (ORBC). The WRRC and ORBC both administer State marketing orders, which require all producers of raspberries to pay assessments to support the health of their respective industries. According to WRRC, the two commissions have developed a good working relationship with each other over the years. Both the WRRC and ORBC invest funds into research programs at their land-grant universities and other research institutions to study disease, pest control, and varietal development. In addition to developing and funding production research, they also fund marketing and promotion programs and seek to foster education and communication between producers. However, the WRRC, stated that it has not been able to generate the funds necessary, nor has the ORBC or international raspberry organizations, to support the marketing efforts needed to help expand processed raspberry consumption and increase the demand for processed raspberries. In order to manage increased production, increased competition, and changing consumer habits, the WRRC believes that a more extensive marketing program is needed. The WRRC and ORBC believe that a national research and promotion program would fund the promotional aspect necessary to stay competitive and would place all domestic producers and importers on an equal playing field with each investing a fair share in promoting processed raspberries. The Council may provide credits of assessments for those individuals who contribute to local, regional, or State organizations engaged in similar generic research, promotion, and information programs as applied to assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States. If a national processed raspberry program is established, the WRRC and ORBC will continue to fund processed raspberry research in areas not likely to be the focus of the national program.

The WRRC and ORBC programs are not able to engage raspberry production in other States or countries in a meaningful way. The proposed program is not intended to duplicate any State program. Considerable attention is being made to involve producers in discussions regarding future program development and administration and what the State commissions would look like prior to the initial referendum. It is expected that farm related activities, such as production research, would continue to be funded by the State organizations and market development functions, such as nutritional research and marketing programs, would shift to the Proposed Order.

The WRRC proposed that producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries respectively, be exempt from assessments. The WRRC also proposed that a producer who operates under an approved National Organic Program (NOP) system plan, produces only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, be exempt from paying assessments under the Proposed Order. An importer who imports only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would also be exempt from paying assessments.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

The Department invited comments concerning potential effects of the Proposed Order on small entities and the accuracy regarding the number and size of entities covered under the Proposed Order. We did not receive any comments as a result of the publication of the Initial Regulatory Flexibility Analysis.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], AMS has requested approval of a new information collection and recordkeeping requirements for the proposed Processed Raspberry Program.

*Title:* Advisory Committee or Research and Promotion Background Information.

*OMB Number for background form AD–755:* (Approved under OMB No. 0505–0001).

*Expiration Date of Approval:* Awaiting Renewal.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–NEW.

*Expiration Date of Approval:* 3 years from approval date.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

There will also be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register.**

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Council. While the Proposed Order would impose certain recordkeeping requirements on first handlers, information required under the Proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

Under the Proposed Order, importers are responsible to pay assessments. Importers must report the total quantity of processed raspberries imported during the reporting period and a record of each importation of such product during such period, giving quantity, date, and port of entry. Under the Proposed Order, Customs would collect assessments on imported processed raspberries and remit the funds to the Council.

An estimated 297 respondents would provide information to the Council. They would be 195 producers, 50 importers, 34 first handlers/processors, 5 organic producers and importers (for exemption purposes), 2 foreign producers, 10 certified organizations (for nomination purposes), and 1 at-large member. The estimated cost of providing the information to the Council by respondents would be $9,141. This total has been estimated by multiplying 277 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other raspberry programs administered by the Department and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information yearly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, first handlers, processors, foreign producers, and importers who are subject to the provisions of the 1996 Act.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

*(1) A Background Information Form AD–755 (OMB Form No. 0505–0001)*

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each Council nominee.

*Respondents:* Producers, importers, foreign producers, and at-large nominee.

*Estimated number of Respondents:* 26 (52 for initial nominations to the Council, 26 in subsequent years).

*Estimated number of Responses per Respondent:* 1 every 3 years. (0.3)

*Estimated Total Annual Burden on Respondents:* 7.8 hours for the initial nominations to the Council and 3.9 hours annually thereafter.

*(2) An Annual Report by Each First Handler of Processed Raspberries*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per first handler reporting on processed raspberries handled.

*Respondents:* First handlers.

*Estimated number of Respondents:* 34.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 17 hours.

*(3) An Exemption Application for Producers and Importers Who Would Be Exempt From Assessments*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per producers, or importer reporting on processed raspberries produced or imported. Upon approval of an application, producers and importers will receive exemption certification.

*Respondents:* Exempt producers and importers.

*Estimated number of Respondents:* 40.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 10 hours.

*(4) Application for Reimbursement of Assessment*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per request for reimbursement.

*Respondents:* Producers and importers.

*Estimated number of Respondents:* 10.

*Estimated number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2.5 hours.

*(5) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

*Recordkeepers:* Producers, first handlers, and importers.

*Estimated number of recordkeepers:* 297.

*Estimated total recordkeeping hours:* 148.5 hours.

*(6) Application for Certification of Organizations*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

*Respondents:* Importers and foreign producer organizations.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5 hours.

*(7) Nomination Appointment Form*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

*Respondents:* Producers, importers, and foreign producers.

*Estimated Number of Respondents:* 150.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 37.5 hours.

*(8) Nomination Appointment Ballot*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 150.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 37.5 hours.

*(9) Application for Assessments Credit*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

*Respondents:* Producers.

*Estimated Number of Respondents:* 50.

E*stimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 12.5 hours.

*(10) Organic Exemption Form*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 5.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2.5 hours.

*Comments were invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed Order and the Department's oversight of the Proposed Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of the Department's estimate of the principal growing areas in the United States for raspberries destined for processing; (d) the accuracy of the Department's estimate of the number of producers and first handlers of processed raspberries that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. We received one comment regarding the collection of information part of this rule. This comment is discussed in the comments section of this proposal.

**Comments**

A 60-day comment period was provided to allow interested persons an opportunity to respond to this proposal. Twenty-one comments were received on the Proposed Order by the June 08, 2009 deadline. Comments were received from producers of raspberries for processing, importers of processed raspberries, industry associations, consumers, brokers, and other interested parties. Eighteen commenters supported the Proposed Order and three were opposed.

Three commenters that supported the Proposed Order stated that with new challenges in the current global situation, a good marketing program funded by those in the industry would help sustain the industry and that producers and importers working together would provide funds sufficient to carry out nutrition and health based research and subsequent marketing efforts to grow the market for all participants. These commenters also stated that in order to sustain the processed raspberry industry and develop new markets domestically and internationally, it is necessary to have the Proposed Order implemented.

Four commenters that supported the Proposed Order stated that it was necessary for those who benefit from market development activities to share in the cost burden. The commenters also stated that producers from countries that have turned from marketing fresh raspberries to processed raspberries because of the profitability year round should contribute to the cost of promotions and research needed to ensure strong markets. In addition, these commenters stated that importers who benefit from research and promotions generated domestically should pay their fair share into the program. The commenters also believe that growers should pay equitable share of cost to keep the industry healthy and are therefore in favor of the Proposed Order. Under the Proposed Order, producers of raspberries for processing and importers of processed raspberries would pay an assessment of up to one cent per pound, with the initial assessment rate being one cent per pound.

Two commenters in favor of the Proposed Order stated that they appreciate the accessibility of raspberries during off season and the nutrition that they can provide to their family. The comments also stated that consumers need good factual nutrition information and a program to increase supply and build bigger markets is appreciated.

Two commenters that supported the Proposed Order said they felt the initial assessment rate of one cent per pound should provide adequate funding for nutritional research and consumer education programs.

One commenter that supported the Proposed Order believes the 20,000 pound exemption from assessment for producers is appropriate.

Three commenters that supported the Proposed Order were of the view that the Proposed Order would not only benefit small growers, but provide a gross benefit to the fresh market as well and can enable the fresh and processed raspberry industries to work together to build markets and address common research needs.

Two commenters that supported the Proposed Order would like to see fresh and organic raspberries added to the Proposed Order in the future. However, the proponent group did not include fresh raspberries believing that their inclusion was not timely. If the fresh raspberry industry is interested in including fresh raspberries in the proposed program in the future, the Proposed Order would need to be amended and a referendum would be conducted to determine if fresh raspberries should be added. With regard to organic raspberries, a producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, who also produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from the payment of assessments. Furthermore, an importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall also be exempt from the payment of assessments.

One commenter that supported the Proposed Order is concerned that the

Order may disparage the fresh raspberries market. The Proposed Order states in section 1208.48(c) that the Council may not engage in, and shall prohibit, employees and agents of the Council from engaging in any advertising, including promotion, research, and information activities authorized to be carried out under the Order that may be false or misleading or disparaging to another agricultural commodity. Accordingly, this provision addresses the commenter's concern.

One commenter that supported the Proposed Order is concerned that the proposal does not clearly use "processed raspberries" in the definitions of information and research in the Proposed Order. This comment has merit. Accordingly, the Department has changed section 1208.11 and section 1208.24 of the Proposed Order to add processed raspberries to those sections.

One commenter that supported the Proposed Order states that passage of the referendum should be based on voting by a majority of those voting who also represent a majority of production of processed raspberries. Section 518(e) of the 1996 Act states that an order may provide for its approval in referendum by a majority of those persons voting, by persons voting for approval who represent a majority of the volume of the agricultural commodity, or by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Any one of these three voting criteria would be appropriate for a research and promotion program. However, the proponent group proposed that passage of the referendum be based on a majority of those persons voting in the referendum. Further, only one comment was received concerning this matter. Therefore, the Department will keep the current method of voting, which is by a majority of those persons voting in the referendum, as the industry has put forth in the Proposed Order.

Three commenters that supported the Proposed Order believe that promotion activities should be restricted to the United States or consequently would request that the Council demonstrate how foreign expenditures will have the result of promotion consumption in the United States as well as abroad. Section 512(b)(2) of the Act provides authority for the Council to conduct activities in foreign markets. Furthermore, it is the Department's policy that the funds used for promotions for those research and promotion programs that promote outside the U.S. be proportionate to the funds collected domestically. In addition, the Council is composed of both importers and producers, and it is the Council's responsibility to determine how best to properly allocate the funds collected consistent with the provisions of the Order and the 1996 Act.

One commenter that supported the Proposed Order would like a credit of assessments for contributions made to programs for generic activities initiated in foreign countries. According to section 516(e)(1) of the 1996 Act, authority is provided for credits of assessments for those individuals who contribute to other similar generic research, promotion, and information programs at the State, regional, or local level. Accordingly, no change to the proposal is made as a result of this comment.

Four commenters that supported the Proposed Order proposed that the aggregate credits that any importer or U.S. producer may be entitled to receive for contributions to U.S.-based and non U.S.-based generic research, promotion, and information programs in any one year be limited to an amount equal to no more than twenty-five percent of the total assessments paid by such importer or producer in that year. Section 516 of the 1996 Act authorizes credits only for similar generic research, promotion and information programs at the State, regional, or local level. The Department believes that this comment as it relates to a credit limit on contributions to U.S.-based programs has merit. However, a specific amount should be determined by the Council with approval of the Secretary. Therefore, section 1208.52(h)(3) of the Proposed Order is changed to add language allowing the Council to determine an appropriate rate. However, as stated above, contributions to non-U.S.-based programs are not authorized to receive credits of assessments paid.

One commenter that supported the Proposed Order approves of the provision for a public member and the membership distribution on the Council in the Proposed Order.

Three commenters that supported the Proposed Order suggested that the number of board seats for importers be reduced from three to two, while the number of foreign producer seats increase from two to three. In addition, three commenters proposed an increase in foreign producer seats on the Council because they believe that foreign producers will ultimately bear the cost of assessments. The Proposed Order states that the Council be composed of thirteen members and thirteen alternate members, appointed by the Secretary from nominations as follows: Six processed raspberry producer members and alternate members from States producing a minimum of three million pounds of raspberries delivered for processing; one processed raspberry producer member and alternate member representing all other States producing less than a three million pounds of raspberries delivered for processing; three processed raspberry importer members and alternate members; two foreign producers and their alternate members from countries exporting a minimum of three million pounds of raspberries for processing to the U.S., based on a three-year average; and one at-large member and an alternate recommended by the Council. Using this distribution, the domestic producer members on the Council would account for 54 percent of Council membership, importer members would account for 23 percent of Council membership, foreign producers would account for 15 percent of Council membership, and the at-large member would account for 8 percent of Council membership. In 2010, estimated revenue from assessments is expected at $1.2 million of which 57 percent is expected from domestic product and 43 percent from imported product. The total number of importers and foreign producers on the Council will equal 38 percent of the total seats on the Council. Taking into account the amount of domestic and imported product, the composition of the Council as proposed is reasonable. Accordingly, the Department is not making any changes to this section.

In addition, under the Proposed Order, producers of raspberries for processing and importers of processed raspberries would pay an assessment of up to one cent per pound, with the initial assessment rate being one cent per pound. Although the commenters believe that foreign producers would ultimately bear the cost of the assessments levied on importers, only producers and importers will pay assessments under the program. However, both foreign producers and importers will have representation on the Council. Therefore, the Department has not changed the proposed distribution of seats on the Council.

Two commenters that supported the Proposed Order were concerned that processed black raspberries would be included in the domestic and import assessment. The commenters proposed that growers of black raspberries for processing and importers of processed black raspberries be exempt from payment of assessments. The Department agrees with this comment as it relates to excluding black raspberries for processing and processed black raspberries from the Proposed Order. The Department worked with the 484(f)

Committee (Committee) of the United States International Trade Commission (USITC) which is the committee that reviews requests for changes to the statistical reporting requirements of the HTS for imports, to determine the feasibility of separating processed red raspberries from HTS code 0811.20.20.20. According to the Committee, separating the HTS code for processed red raspberries from all other raspberries is feasible. Accordingly, the Committee approved the petition for processed red raspberry statistical breakout in the Harmonized Tariff Schedule. The new number assigned to processed red raspberries will be 0811.20.2025 and the residual "other" for other processed raspberries, including black raspberries, will be 0811.20.2035, effective January 1, 2010. Therefore, black raspberries for processing, also defined as the genus Rubus occidentalis L., are not covered by the Order.

Two commenters that supported the Proposed Order were concerned that the assessments on imports collected did not include raspberry juice and raspberry juice concentrate. Raspberry juice and raspberry juice concentrate are currently under an HTS code that includes other juices in addition to raspberry juice. According to the Committee, separating the HTS code for raspberry juice and raspberry juice concentrate from all other juices is not feasible at this time. Therefore, no change to the Order provisions is made as a result of these comments.

One commenter that supported the Proposed Order stated that the preferred timing of a referendum would be after the peak harvest season of July or August. The referendum will be conducted outside of those months.

One commenter stated that the reporting required by the Proposed Order and assessment remittance procedures would not be a problem because the commenter keeps similar records for a State program and remits assessments in a similar manner.

Two commenters that opposed the Proposed Order were concerned about the effect of the cost of the program on the national taxpayer. Assessments would be paid by producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively. Research and promotion programs under the Department are self-help programs, funded by their applicable industries, and do not receive taxpayer funds.

Two commenters that opposed the Proposed Order stated that the price of raspberries is unaffordable and the addition of a research program for raspberries would subsequently increase the price further. The purpose of the Proposed Order is to maintain and expand markets for processed raspberries as well as to develop and carry out generic promotion, research, and information activities relating to processed raspberries. The Proposed Order does not regulate the price of raspberries. Further, these self-help programs usually make products more available to consumers by promoting year-round. Accordingly, no changes were made to the Proposed Order as a result of these comments.

Upon review, the Department has made additional changes to the Proposed Order. The Department has changed the definitions of first handler in section 1208.6 and handle in section 1208.9 to add for clarity, the term raspberries for processing, where appropriate. The reference to producers who handle their own production also is clarified. The Department added section 1208.40(c) to provide guidance to industry members when nominating members to the Council. The Department has changed section 1208.53(c) to revise the period of time concerning a request for reimbursement from importers from ninety (90) days to sixty (60) days to conform with other similar exemption time frames. In addition, the Department has changed section 1208.53(d)(1), (d)(2), and (d)(3) to correctly state that the provisions of the exemption under the National Organic Program apply to producers of raspberries for processing, not handlers. The supplementary information section of the proposed rule incorrectly described the producer exemption. Finally, the references to individuals in section 1208.52(h) is changed for clarify to persons.

The Proposed Order is summarized as follows: 1208.1 through 1208.29 of the Proposed Order define certain terms, such as processed raspberries, first handler, and importer, which are used in the Proposed Order.

Sections 1208.40 through 1208.48 include provisions relating to the Council. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, alternate members, and procedures for conducting Council business, compensation and reimbursement, and powers and duties of the Council, and prohibited activities. The Council is the governing body authorized to administer the Proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about processed raspberries, subject to oversight of the Secretary.

Sections 1208.50 through 1208.56 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used, including reimbursement of necessary expenses incurred by the Council for the performance of its duties and expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; outline exemption procedures; address programs, plans, and projects; require the Council to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The proposed assessment rate is up to one cent per pound for domestic raspberries for processing and imported processed raspberries, with the initial assessment rate being one cent per pound. The assessment rate will be reviewed, and increased or decreased as recommended by the Council and approved by the Secretary after the first referendum is conducted as stated in § 1208.71 (a). Such an increase or decrease may occur not more than once annually and may not exceed the initial assessment rate of one cent per pound. Any change in the assessment rate shall be subject to rulemaking by the Department, and will be reviewed, and increased or decreased by the Secretary through rulemaking as recommended by the Council. Any change in the assessment rate shall be announced by the Council at least 30 days prior to going into effect. The maximum assessment rate authorized is one cent per pound.

The assessment rate may be raised or lowered at a rate not to exceed one cent per pound, after the initial continuance referendum which would be conducted after the program has been in operation five years. A referendum to approve the new assessment rate or for any other change is not required.

Sections 1208.60 through 1208.62 concerns reporting and recordkeeping requirements for persons subject to the Proposed Order and protect the confidentiality of information from such books, records, or reports.

Sections 1208.70 through 1208.78 describe the rights of the Secretary; address referenda; authorize the Secretary to suspend or terminate the Proposed Order when deemed appropriate; prescribe proceedings after

termination; address personal liability, separability, and amendments; and provide OMB control numbers.

While the proposal set forth below has not received the approval of the Department, it is determined that this Proposed Order is consistent with and will effectuate the purposes of the 1996 Act.

For the Proposed Order to become effective, it must be approved by a majority of producers and importers voting for approval in the referendum. Referendum procedures will be published separately in this issue of the **Federal Register.**

**Referendum Order**

Pursuant to the 1996 Act, a referendum will be conducted to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor issuance of the Proposed Order. The Proposed Order is authorized under the 1996 Act.

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 2008, through December 31, 2008. Producers must have produced 20,000 pounds of raspberries for processing and importers must have imported 20,000 pounds of processed raspberries during the representative period from January 1, 2008 through December 31, 2008, to be eligible to vote. The referendum shall be conducted by mail ballot from March 22, 2010 through April 2, 2010. Ballots must be received by the referendum agents no later than the close of business 4:30 pm (Eastern Time) on April 2, 2010, to be counted.

Section 518 of the 1996 Act authorizes the Department to conduct a referendum prior to the Order's effective date. The Order shall become effective only if it is determined that the Order has been approved by a majority of those eligible persons voting for approval.

Marlene Betts and Kimberly Coy, of the USDA, AMS, Research and Promotion Branch, are designated as the referendum agents to conduct this referendum. The referendum procedures [7 CFR 1208.100 through 1212.108], which were issued pursuant to the 1996 Act, shall be used to conduct the referendum.

The referendum agents will mail registration instructions to all know eligible producers and importers in advance of the referendum. Any producer or importer who does not receive registration instructions should contact the referendum agent cited under the "For Further Information" section no later than one week before the end of the registration period. Prior to the first day of the voting period, the referendum agents will mail the ballots to be cast in the referendum and voting instructions to all eligible to voters. Persons who are producers and importers during the representative period are eligible to vote. Any producer or importer who does not receive a ballot should contact the referendum agent cited under the **FOR FURTHER INFORMATION** section no later than one week before the end of the registration period. Ballots must be received by the referendum agents by the close of business on or before April 2, 2010, to be counted.

In accordance with the OMB regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. 35], the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, was submitted to OMB for approval and approved under OMB Number 0581–NEW.

**List of Subjects in 7 CFR Part 1208**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that part 1208, Title 7, Chapter XI of the Code of Federal Regulations, be amended as follows:

## PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1208 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

2. Subpart A, consisting of §§ 1208.1 through 1208.78, is added to read as follows:

**Subpart A—Processed Raspberry Promotion, Research, and Information Order**

**Definitions**

Sec.



**National Processed Raspberry Council**



**Expenses and Assessments**



**Reports, Books, and Records**



**Miscellaneous**



## Subpart A—Processed Raspberry Promotion, Research, and Information Order

### Definitions

#### § 1208.1 Act.

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

#### § 1208.2 Conflict of interest.

*Conflict of interest* means a situation in which a member or employee of the

Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

**§ 1208.3 Crop year.**

*Crop year* means the 12-month period from April 1 to March 31 or such other period approved by the Secretary.

**§ 1208.4 Customs.**

*Customs* means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

**§ 1208.5 Department.**

*Department* means the United States Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

**§ 1208.6 First handler.**

*First handler* means any person (excluding a common or contract carrier) receiving raspberries for processing from producers in a calendar year and who as owner or agent, ships or causes processed raspberries or raspberries for processing to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale, receiving, packing, grading, marketing, or distributing processed raspberries or raspberries for processing in commercial quantities. This definition excludes a retailer, except a retailer who purchases or acquires from, or handles on behalf of, any producer of raspberries for processing. The term first handler includes a producer who handles or markets processed raspberries of the producer's own production.

**§ 1208.7 Fiscal period.**

*Fiscal period* means a calendar year from April 1 through March 31, or such other period as approved by the Secretary.

**§ 1208.8 Foreign producer.**

*Foreign producer* means any person:

(a) Who is engaged in the production and sale of raspberries for processing outside of the United States and who owns, or shares the ownership and risk of loss of raspberries for processing for sale in the U.S. market; or

(b) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, processed raspberries beyond the person's own family use and having value at first point of sale.

**§ 1208.9 Handle.**

*Handle* means to pack, process, sell, transport, purchase, or in any other way to place or cause processed raspberries or raspberries for processing to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of raspberries for processing by the producer thereof to a handler.

**§ 1208.10 Importer.**

*Importer* means any person importing 20,000 pounds or more of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such processed raspberries.

**§ 1208.11 Information.**

*Information* means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of processed raspberries or raspberries for processing on a national basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of processed raspberries and raspberries for processing.

(b) *Food industry information,* which means any action taken to provide information to, and broaden the understanding of, the food industry regarding the consumption, use, nutritional attributes, and care of processed raspberries and raspberries for processing.

(c) *Industry information,* which means any action taken to provide information to or collect information from, and broaden the underestimating of, the raspberry industry regarding the production, consumption, use, nutritional attributes, and care of processed raspberries and raspberries for processing.

**§ 1208.12 Market or marketing.**

(a) *Marketing* means the sale or other disposition of processed raspberries in interstate, foreign or intrastate commerce.

(b) To *market* means to sell or otherwise dispose of processed raspberries in any channel of commerce.

**§ 1208.13 National Processed Raspberry Council.**

*National Processed Raspberry Council* or such other name as recommended by the Council and approved by the Department means the administrative body established pursuant to § 1208.40.

**§ 1208.14 Order.**

*Order* means the Processed Raspberry Promotion, Research, and Information Order.

**§ 1208.15 Part and subpart.**

*Part* means the Processed Raspberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

**§ 1208.16 Person.**

*Person* means any *individual,* group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

**§ 1208.17 Processed raspberries.**

*Processed raspberries* means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

**§ 1208.18 Processor.**

*Processor* means a person engaged in the preparation of raspberries for processing for market who owns or who shares the ownership and risk of loss of such raspberries.

**§ 1208.19 Producer.**

*Producer* means any person who grows 20,000 pounds or more of raspberries for processing in the United States for sale in commerce, and a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

**§ 1208.20 Promotion.**

*Promotion* means any action taken to present a favorable image of processed raspberries to the general public and the food industry for the purpose of improving the competitive position of processed raspberries both in the United States and abroad and stimulating the sale of processed raspberries including paid advertising and public relations.

**§ 1208.21 Qualified national organization representing importer interests.**

*Qualified national organization representing importer interests* means an organization that the Secretary certifies as being eligible to nominate

importer and alternate importer members to the Council.

**§ 1208.22 Qualified organization representing foreign producer interests.**

*Qualified organization representing foreign producer interests* means an organization that the Secretary certifies as being eligible to nominate foreign producer and alternate foreign producer members to the Council.

**§ 1208.23 Raspberries.**

*Raspberries* mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus "rubus idaeus L." grown in or imported into the United States.

**§ 1208.24 Research.**

*Research* means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of processed raspberries or raspberries for processing, including but not limited to research relating to nutritional value, cost of production, new product development, health research, and marketing of processed raspberries or raspberries for processing.

**§ 1208.25 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

**§ 1208.26 State.**

*State* means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**§ 1208.27 Suspend.**

*Suspend* means to issue a rule under section 553 of title 5 U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

**§ 1208.28 Terminate.**

*Terminate* means to issue a rule under section 553 of title 5 U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

**§ 1208.29 United States.**

*United States* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**National Processed Raspberry Council**

**§ 1208.40 Establishment and membership.**

(a) *Establishment of the National Processed Raspberry Council.* There is hereby established a National Processed Raspberry Council, or such other name as recommended by the Council and approved by the Department, hereinafter called Council, composed of thirteen (13) members and thirteen (13) alternate members, appointed by the Secretary from nominations as follows:

(1) Six (6) processed raspberry producer members and alternate members from States producing a minimum of three (3) million pounds of raspberries delivered for processing. Distribution of the seats among the eligible States shall be proportional to the percent determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds by all of the eligible States for the previous three years. Only States whose producers deliver raspberries for processing and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(2) One (1) processed raspberry producer member and alternate member representing all other States producing less than three (3) million pounds of raspberries delivered for processing. All States producing less than three million pounds of raspberries delivered for processing will constitute a region from which one producer member and alternate will be nominated to the Council. Only States whose producers deliver raspberries for processing and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(3) Three (3) processed raspberry importer members and alternate members;

(4) Two (2) foreign producers and their alternate members from countries exporting a minimum of three million pounds of raspberries for processing to the U.S., based on a three-year average; and

(5) One (1) at-large member and an alternate recommended by the Council and shall be submitted by the Council to the Secretary for approval. In recommending the at-large member and alternate, the Council shall give consideration to nutrition health professionals and others interested in the raspberry industry. Nominations for the initial Council will be handled by the Department.

(b) *Adjustment of membership.* At least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of processed raspberries and the quantity and source of processed raspberry imports. The review will be conducted through an audit of State crop production figures and Council assessment receipts. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic raspberry production for processing and the quantity of imports. If the level of imports increases or decreases, importer members and alternates may be added or reduced on the Council, subject to recommendation by the Council and approval of the Secretary. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

(c) *Council's Ability to Serve the Diversity of the Industry.* When making recommendations for appointments, the industry should take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other distinguishing factors to ensure that the Council represents the diverse interests of persons responsible for paying assessments, and others in the marketing chain, if appropriate.

**§ 1208.41 Nominations and appointments.**

(a) Voting for regional and State producer representatives will be made by mail ballot.

(b) Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council.

(c) The nominations for the six producer and alternate members from States producing a minimum three year average of three million pounds of raspberries delivered for processing will be submitted to the Council in the following manner:

(1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. Nominations will be sent to the Council and placed on a ballot which will then

be sent to producers in the State for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(3) The distribution of the six producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds produced over the previous three years.

(d) The nominee for the one raspberry producer of raspberries for processing and alternate member who represents all other States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, will constitute a region and the nominations will be submitted to the Council in the following manner:

(1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. The State commission or committee nominations will be sent to the Council and placed on a ballot which will then be sent to producers in the Region for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States. The State Departments of Agriculture would have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Only producers from States that deliver raspberries for processing and are covered under the program are eligible for nomination and election to the Council. Average production will be based upon Department production data for the initial nomination and production figures generated by either the Council or the Department thereafter.

(f) Nominations for the importer positions and their alternates will be made by qualified national organizations representing importers as follows:

(1) All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council. Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(2) If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council, those that imported processed raspberries into the U.S., may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(g) Nominations for the foreign producer positions and their alternates will be made by qualified organizations representing foreign producers as follows:

(1) All qualified organizations representing foreign producer interests will have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the foreign producer positions and the foreign producer alternate positions on the Council.

(2) If the Department determines that there are no qualified organizations representing foreign producer interests, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. For the initial Council, persons that meet the definition of foreign producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(h) Nominations for the at-large member and alternate will be conducted at a Council meeting by the Council and shall be submitted by the Council to the Secretary for approval. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

(i) From the nominations, the Secretary shall select the members of the Council and alternates for each position on the Council. Members will serve until their replacements have been appointed by the Secretary.

(j) If there is an insufficient number of nominees from whom to appoint members to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(k) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer

interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization must represent a substantial number of importers who market or produce a substantial volume of raspberries for processing;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must promote processed raspberries importers' welfare; and

(4) The organization must derive a portion of its operating funds from importers.

(l) Qualified organization representing foreign producer interests. To be certified by the Secretary as a qualified organization representing foreign producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization must represent a substantial number of foreign producers who produce a substantial volume of raspberries for processing;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must promote processed raspberry foreign producers' welfare;

(4) The organization must derive a portion of its operating funds from foreign producers; and

(5) The organization must be from a country exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average.

(m) Eligible organizations, foreign producers, or importers must submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office. At least two nominees for each position to be filled must be submitted.

**§ 1208.42 Term of office.**

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, four producer members, two importers, one of the two foreign producers, and the at-large member and their respective alternates will be assigned initial terms of three years. The remaining three producer members, one importer member, and the second foreign producer and their alternates will serve an initial term of two years. Members serving an initial term of two years will be eligible to serve a second term of three years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified. Each term of office will end on December 31, with new terms of office beginning on January 1.

**§ 1208.43 Vacancies.**

(a) In the event that any member of the Council ceases to be a member of the category of membership from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary may remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in §§ 1208.40 and 1208.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

**§ 1208.44 Alternate members.**

An alternate member of the Council, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that a producer, importer, foreign producer, or at-large member of the Council and their alternate are unable to attend a meeting, the Council may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

**§ 1208.45 Procedure.**

(a) At a Council meeting, it will be considered a quorum when a majority (one more than half) of the Council members is present. An alternate will be counted for the purpose of determining a quorum only if the member for whom the person is the alternate is absent or disqualified from participating.

(b) At the start of each fiscal period, the Council will select a chairperson, vice chairperson, and other officers as appropriate, who will conduct meetings throughout that period.

(c) The chairperson and the treasurer shall reside in the United States, and the Council office shall also be located in the United States.

(d) All Council meetings shall be held in the United States.

(e) All Council members and alternates will receive a minimum of 20 days' advance notice of all Council and committee meetings.

(f) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by one (1) vote more than 50 percent of the total votes represented by the Council members present.

(g) It will be considered a quorum at a Council committee meeting when at least one more than half of those assigned to the Council committee are present. Alternates may also be assigned to Council committees as necessary. Council committees may consist of persons other than Council members and such persons may vote in Council committee meetings.

(h) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action if supported by one vote more than 50 percent of the members present, by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(i) There shall be no voting by proxy.

(j) The chairperson shall be a voting member.

(k) The organization of the Council and the procedures for the conducting of meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

**§ 1208.46 Compensation and reimbursement.**

The members of the Council, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

**§ 1208.47 Powers and duties.**

The Council shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Council, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Council a chairperson, other officers, committees, and subcommittees, as the Council determines to be appropriate;

(d) To employ persons, other than members, as the Council considers necessary to assist the Council in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop and carry our generic promotion, research, and information activities relating to processed raspberries;

(f) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Council shall develop and submit to the Council a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Council of activities conducted under the contract or agreement; and make such other reports available as the Council or the Secretary considers necessary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(g) To prepare and submit for approval of the Secretary, before the beginning of each fiscal year, rates of assessment and a fiscal year budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Council in accordance with § 1208.50;

(h) To borrow funds necessary for the startup expenses of the order;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Council;

(j) To cause its books to be audited by a independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;

(l) To act as intermediary between the Secretary and any producer, first handler, processor, importer, or foreign producer;

(m) To furnish to the Secretary any information or records that the Secretary may request;

(n) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(o) To recommend to the Secretary such amendments to the Order as the Council considers appropriate;

(p) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the processed raspberry industry's position in the marketplace; maintain and expand existing markets and uses for processed raspberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the processed raspberry industry; and

(q) To pay the cost of the activities with assessments collected under § 1208.52.

**§ 1208.48 Prohibited activities.**

The Council may not engage in, and shall prohibit the employees and agents of the Council from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that may be false or misleading or disparaging to another agricultural commodity.

**Expenses and Assessments**

**§ 1208.50 Budget and expenses.**

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. The budget for research, promotion, or information may not be implemented prior to approval of the budget by the Secretary. No later than forty-five (45) days after the receipt of such budget, the Secretary shall notify the Council whether the Secretary approves or disapproves the budget. Each budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget); and

(3) A summary of proposed expenditures for each program, plan, or project;

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed

expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts in funds which do not cause an increase in the Council's approved budget, and which are consistent with by laws, need not have prior approval by the Department.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council is authorized to repay startup costs associated with establishing a program and an initial referendum. If approved, these costs would be amortized and repaid over a maximum three (3) year period.

(g) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.

(h) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(i) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(k) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(l) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Council may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

**§ 1208.51 Financial statements.**

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

**§ 1208.52 Assessments.**

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers at a rate not to exceed one cent per pound; the initial rate is one cent per pound, donations from any person not subject to assessments under this Order, and other funds available to the Council including those collected pursuant to § 1208.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic processed raspberries will be the responsibility of the first handler receiving the raspberries for processing. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments. The rate of assessments shall be prescribed in regulations issued by the Secretary.

(c) The Council may recommend to the Secretary an increase or decrease to the assessment rate. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department.

(d) Each importer of processed raspberries shall pay an assessment to the Council on processed raspberries imported for marketing in the United States, through Customs. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Council. The assessment rate for imported processed raspberries shall not exceed one cent per pound, with the initial rate being one cent per pound.

(1) The assessment rate for imported processed raspberries shall be the same or equivalent to the rate for processed raspberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported processed red raspberries that are identified by the numbers 0811.20.2025 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify processed raspberries.

(3) The assessments due on imported processed raspberries shall be paid when they enter into the United States or are withdrawn for consumption in the United States.

(e) All assessment payments will be submitted to the office of the Council. All final payments for a crop year are to be received no later than October 30 of that year for producers of processed raspberries within the United States. A late payment charge shall be imposed on any handler or importer who fails to remit to the Council, the total amount for which any such first handler or importer is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the first handler or importer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The Council may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(h) Council may provide credits of assessments for those persons who contribute to local, regional, or State

organizations engaged in similar generic research, promotion, and information programs as partial fulfillment of assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States.

(1) No credit will be given for funds expended for administrative purposes.

(2) No credit shall be given for research, promotion, and information program activity conducted outside of the United States.

(3) The aggregate credit allowable in any one year shall be limited to an amount determined by the Council subject to the approval of the secretary, and shall be equal to not more than the determined percentage rate of the total assessments paid by any individual in a year to any State, regional, or local program.

(4) Credit shall only be given for generic research, promotion, and information program activities.

(5) Credit of assessment may be obtained only by following the procedures prescribed in this section and any regulations recommended by the Council and prescribed by the Secretary. An individual owing assessments shall make a written request to the Council and the request shall contain the assessment paying individual's signature and shall show:

(i) The name and address of the assessment paying individual;

(ii) The name and address of the person who collected the assessment;

(iii) The quantity of processed raspberries on which a credit is requested;

(iv) The total amount of credit requested;

(v) The date or dates on which the assessments were paid;

(vi) A certification that the assessment was not collected from another producer or documentation of assessments collected from local, State, or regional organizations; and

(vii) The individual's signature or properly witnessed mark.

(6) The evidence of payment as required under § 1208.61, or a copy thereof, or such other evidence deemed necessary to the Council shall accompany the individual's credit of assessment request.

**§ 1208.53 Exemption and reimbursement procedures.**

(a) Any producer who produces less than 20,000 pounds of raspberries for processing annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1208.52 shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such producer shall certify that the producer's production of raspberries for processing shall be less than 20,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 20,000 pounds of processed raspberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1208.52 shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such importer shall certify that the importer's importation of processed raspberries shall not exceed 20,000 pounds, for the fiscal year for which the exemption is claimed. If a producer or importer determines at the end of the year that they did not meet the 20,000 pounds minimum, the producer or importer can request a reimbursement on the assessments paid to the Council by 60 days of the last day of the year. If, after a person has been exempt from paying assessments for any year pursuant to this section, and the person no longer meets the requirements of paragraph of this section for an exemption, the person shall file a report with the Council in the form and manner prescribed by the Council and pay an assessment on or before March 15 of the subsequent year on all raspberries for processing produced or processed raspberries imported by such persons during the year for which the person claimed the exemption.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number as supplied by the Council to the first handler in order to be exempt from the collection of an assessment on raspberries for processing. First handlers shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council.

(c) Importers who are eligible for reimbursement of assessments collected by Customs shall apply to the Council for reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted within 60 days of the last day of the year the processed raspberries were actually imported. Any claim for reimbursement submitted after sixty (60) days will be considered null and void.

(d) A producer who produces raspberries for processing who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments.

(1) To obtain this exemption, an eligible producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(3) If the producer complies with the requirements of paragraph (d) of this section, the Council will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before March 15 of the fiscal year, the Council will have 60 days to approve the exemption request; after March 15 of the fiscal year, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(4) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic processed raspberries—on a form provided by the Council—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. The Council will also issue the importer a 9-

digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic processed raspberries bearing this HTS classification assigned by the Council will not be subject to assessments.

(e) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(f) The Council, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 1208.53 must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of the exempted commodity.

(g) The exemption will apply immediately following the issuance of the certificate of exemption.

**§ 1208.54 Programs, plans, and projects.**

(a) The Council shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such a program, plan, or project shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer industry information, with respect to processed raspberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, production, health, sale, distribution, and marketing of processed raspberries, and the creation of new products or product development, thereof, to the end that the marketing and use of processed raspberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of processed raspberries.

(b) A program, plan, or project may not be implemented prior to approval of the program, plan, or project by the Secretary. No later than forty-five (45) days after the receipt of such program, plan, or project, the Secretary shall notify the Council whether the Secretary approves or disapproves the program, plan, or project. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading, or disparage another agricultural commodity. Processed raspberries of all origins shall be treated equally.

**§ 1208.55 Independent evaluation.**

The Council shall, not less often than once every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

**§ 1208.56 Patents, copyrights, trademarks, information, publications, and product formulations.**

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Council under this subpart shall be the property of the U.S. Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Council, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1208.73 shall apply to determine disposition of all such property.

**Reports, Books, and Records**

**§ 1208.60 Reports.**

(a) Each first handler subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the Council 30 days after the end of the crop year.

(b) Each importer subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds processed raspberries imported;

(2) Number of pounds which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound processed raspberries imported. All reports are due to the Council 30 days after the end of the crop year.

**§ 1208.61 Books and records.**

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two (2) years beyond the fiscal period of their applicability.

**§ 1208.62 Confidential treatment.**

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, exporters, foreign producers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or

statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

**Miscellaneous**

**§ 1208.70 Right of the Secretary.**

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed or prepared by the Council shall be submitted to the Secretary for approval.

**§ 1208.71 Referenda.**

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of producers and importers voting for approval in the initial referendum who, during a representative period determined by the Secretary, have been engaged in the production of raspberries for processing or the importation of processed raspberries.

(b) *Subsequent referenda.* Every seven years, the Secretary shall hold a referendum to determine whether producers of raspberry delivered for processing and importers of processed raspberries favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of processed raspberries. The Secretary will also conduct a subsequent referendum if 10 percent or more of all eligible producers of raspberries for processing and importers of processed raspberries request the Secretary to hold a referendum or if the Council established under § 1208.40 requests that the Secretary hold a referendum. In addition, the Secretary may hold a referendum at any time.

**§ 1208.72 Suspension and termination.**

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production or importation of processed raspberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

**§ 1208.73 Proceedings after termination.**

(a) Upon the termination of this subpart, the Council shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Council, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary.

(2) Carry out the obligations of the Council under any contracts or agreements entered into pursuant to the Order.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and the trustees, to such person or persons as the Secretary may direct.

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Council or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more domestic raspberry industry organizations in the interest of continuing processed raspberry promotion, research, and information programs.

**§ 1208.74 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder.

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder.

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

**§ 1208.75 Personal liability.**

No member, alternate member, or employee of the Council shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty or willful misconduct.

**§ 1208.76 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

**§ 1208.77 Amendments.**

Amendments to this subpart may be proposed from time to time by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

**§ 1208.78 OMB control numbers.**

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, OMB control number 0581–0093, and OMB control number 0581–NEW.

Dated: January 27, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–2065 Filed 2–5–10; 8:45 am]

**BILLING CODE 3410–02–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

**RIN 3133–AD65**

### Chartering and Field of Membership for Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of extension of comment period.

**SUMMARY:** On December 17, 2009, the NCUA Board issued a proposed rule amending its chartering and field of membership manual to update its community chartering policies and define the terms "rural district" and "in danger of insolvency" for emergency merger purposes. 74 FR 68722 (December 29, 2009). NCUA has received several requests to extend the comment period set in the proposed rule and has determined to extend the comment period for an additional 45 days.

**DATES:** Comments must be postmarked or received by April 15, 2010.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Rule IRPS 09–1," in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

*Public Inspection:* All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** On December 17, 2009, the NCUA Board issued a proposed rule to amend its chartering and field of membership manual to update its community chartering policies. The amendments include using objective and quantifiable criteria to determine the existence of a local community and defining the term "rural district." The amendments clarify NCUA's marketing plan requirements for credit unions converting to or expanding their community charters and define the term "in danger of insolvency" for emergency merger purposes. 74 FR 68722 (December 29, 2009).

NCUA requested comments on its proposal and set a 60-day comment period. NCUA has received several requests to extend the comment period. The NCUA Board believes a 45-day extension will help facilitate the submission of comments without causing undue delay to the rulemaking process. Accordingly, the comment period is extended and comments must now be postmarked or received by April 15, 2010.

By the National Credit Union Administration Board on February 1, 2010.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2010–2605 Filed 2–5–10; 8:45 am]

**BILLING CODE 7535–01–P**

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1225

**RIN 2590–AA01**

### Minimum Capital

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing and seeking comment on a proposed rule to effect a provision of the Federal Housing Enterprises Financial Safety and Soundness Act that provides for a temporary increase in the minimum capital level for entities regulated by FHFA—Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or the Federal Home Loan Banks. The proposed rule provides clarity regarding standards for imposing a temporary increase, for rescinding such an increase and a time frame for review of such an increase.

**DATES:** Comments on the proposed rule must be received on or before April 9, 2010. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the proposed rulemaking, identified by "[RIN 2590–AA01]," by any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov*. Please include "[RIN 2590–AA01]" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: "Minimum Capital Proposed Rule, [RIN 2590–AA01]."
- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/[RIN 2590–AA01], Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/[RIN 2590–AA01], Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Christopher T. Curtis, Senior Deputy General Counsel, *Christopher.Curtis@fhfa.gov,* (202) 414–8947 or Jamie Schwing, Associate General Counsel, *Jamie.Schwing@fhfa.gov,* (202) 414–3787, (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Comments

The Federal Housing Finance Agency (FHFA) invites comment on all aspects of the proposed rule, and will take all relevant comments into consideration before issuing the final regulation. Copies of all comments will be posted

without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

## II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent agency of the Federal Government. FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities) and to ensure they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Safety and Soundness Act and other authorizing statutes, and with rules, regulations, guidelines and orders issued under these statutes and the charters of the Enterprises and the Banks; carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their charters; and, that the activities and operations of the entities are consistent with the public interest.[1] The regulated entities continue to operate under regulations promulgated by the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board until such time as the existing regulations are supplanted by regulations promulgated by the FHFA.[2]

Section 1111 of HERA amended section 1362 of the Safety and Soundness Act to provide additional authorities for FHFA regarding minimum capital requirements. Section 1362(a) establishes a minimum capital level for the Enterprises, while section 1362(b) incorporates the minimum capital level for the Federal Home Loan Banks established by the Federal Home Loan Bank Act (Bank Act).[3] The section explicitly authorizes the Director, by regulation, to provide for capital levels higher than the minimum levels specified for the Enterprises or the Banks or for both to promote safe and sound operations.[4] Also, section 1362(e) provides for additional capital and reserve requirements to be issued by order or regulation with respect to a product or activity.[5] Section 1362(f) provides for a periodic review of core capital maintained by an Enterprise, the amount of capital retained by the Banks and the minimum capital levels set forth for the regulated entities required under this section.[6]

In addition, section 1362(d) provides that the Director, by order, may temporarily increase an established minimum capital level, when the director determines "that such an increase is necessary and consistent with the prudential regulation and the safe and sound operations of a regulated entity."[7] The section also provides that the Director shall rescind the temporary minimum capital level when the Director determines circumstances no longer justify the temporary level.[8] To effect the higher temporary minimum capital level, the Director must issue regulations setting forth standards for the imposition of a temporary increase, standards and procedures that will be used to make the determination regarding rescission and a time frame for periodic review of any temporary increase in the minimum capital level to make a determination regarding rescission.[9]

Especially in times of economic stress such as the present, it is important that the Director be able to respond when necessary to conditions affecting a regulated entity by imposing an appropriately higher capital requirement in an expeditious manner. Section 1362(d) recognizes that need, and the proposed rule would implement that authority. The proposed rule sets forth procedures and standards as required in the Safety and Soundness Act for a temporary increase in the minimum capital levels of the Enterprises or the Banks, including a determination to order an increase, to rescind all or part of the increase and the time for periodic review of an increase as provided in section 1362(d). The standards that the Director would apply in determining whether to impose a temporary capital increase, and its amount, are those that experience has shown are indicators of the financial health of an institution and, in the worst case, of its risk of failure.

## Regulatory Impacts

### *Paperwork Reduction Act*

The proposed regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The Director of FHFA certifies that the proposed rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

## List of Subjects

Capital, Federal Home Loan Banks, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Filings, Minimum Capital, Procedures, Standards.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4513, 4526 and 4612, the Federal Housing Finance Agency proposes to amend Chapter XII of title 12 of the Code of Federal Regulations by adding part 1225 to Subchapter B to read as follows:

[1] 12 U.S.C. 4513.

[2] *See* sections 1302 and 1312 of HERA.

[3] The Bank Act's current minimum capital requirements apply to the eleven banks that have converted to the capital structure provided in the Bank Act as amended by the Gramm-Leach-Bliley Act of 1999, *see* Bank Act section 6(a)(2), 12 U.S.C. 1426(a)(2), but do not apply to the Federal Home Loan Bank of Chicago. The Federal Home Loan Bank of Chicago is subject to capital requirements as set forth in a 2007 Cease and Desist Order, as amended. *See* 74 FR 5597 (January 30, 2009). As a result, the definition of "minimum capital level" as set forth in the proposed regulation is structured to take into account the current supervisory status of the Federal Home Loan Bank of Chicago.

[4] 12 U.S.C. 4612(c).

[5] 12 U.S.C. 4612(e).

[6] 12 U.S.C. 4612(f).

[7] 12 U.S.C. 4612(d)(1).

[8] 12 U.S.C. 4612(d)(2).

[9] 12 U.S.C. 4612(d)(3).

**Subchapter B—Entity Regulations**

## PART 1225—MINIMUM CAPITAL—TEMPORARY INCREASES

Sec.
1225.1 Purpose.
1225.2 Definitions.
1225.3 Procedures.
1225.4 Standards and Factors.

**Authority:** 12 U.S.C. 4513, 4526 and 4612.

### § 1225.1 Purpose.

FHFA is responsible for ensuring the safe and sound operation of regulated entities. In furtherance of that responsibility, this part sets forth standards and procedures FHFA will employ to determine whether to require or rescind a temporary increase in the minimum capital levels for a regulated entity or entities pursuant to 12 U.S.C. 4612(d).

### § 1225.2 Definitions.

For purposes of this part, the term:

*Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term *Enterprises* means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

*Minimum Capital Level* means the lowest amount of capital meeting any regulation or orders issued pursuant to 12 U.S.C. 1426(a)(2) and 12 U.S.C. 4612, or any similar requirement established for a Federal Home Loan Bank by regulation, order or other action.

*Regulated Entity* means—

(1) The Federal National Mortgage Association and any affiliate thereof;

(2) The Federal Home Loan Mortgage Corporation and any affiliate thereof; and

(3) Any Federal Home Loan Bank.

*Rescission* means a removal in whole or in part of an increase in the temporary minimum capital level.

### § 1225.3 Procedures.

(a) *Information*—(1) *Information to the Regulated Entity or Entities.* If the Director determines, based on standards enunciated in this part, that a temporary increase in the minimum capital level is necessary, the Director will provide notice to the affected regulated entity or entities 30 days in advance of the effective date of such increase, unless the Director determines that an exigency exists that does not permit such notice or the Director determines a longer time period would be appropriate.

(2) *Information to the Government.* The Director shall inform the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the Chairman of the Securities and Exchange Commission of a temporary increase in the minimum capital level contemporaneously with informing the affected regulated entity or entities.

(b) *Comments.* The affected regulated entity or entities may provide comments regarding or objections to the temporary increase to FHFA within 15 days or such other period as the Director determines appropriate under the circumstances. The Director may determine to modify, delay, or rescind the announced temporary increase in response to such comments or objection, but no further notice is required for the temporary increase to become effective upon the date originally determined by the Director.

(c) *Communication.* The Director shall transmit notice of a temporary increase or rescission of a temporary increase in the minimum capital level by written, electronic, or such other means as appropriate. Such communication shall set forth, at a minimum, the bases for the Director's determination, the amount of increase or decrease in the minimum capital level, the duration of such increase, and a description of the procedures for requesting a rescission of the temporary increase in the minimum capital level.

### § 1225.4 Standards and factors.

(a) *Standard for Imposing a Temporary Increase.* In making a determination to increase temporarily a minimum capital requirement for a regulated entity or entities, the Director will consider the necessity and consistency of such an increase with the prudential regulation and the safe and sound operations of a regulated entity. The Director may impose a temporary minimum-capital increase if consideration of one or more of the following factors leads the Director to the judgment that the current minimum capital requirement for a regulated entity is insufficient to address the entity's risks:

(1) Current or anticipated declines in the value of assets held by a regulated entity; the amounts of a regulated entity's outstanding mortgage backed securities; and, its ability to access liquidity and funding;

(2) Credit (including counterparty), market, operational and other risks facing a regulated entity, especially where a depreciation in the value of its capital or assets, a decline in liquidity, or an increase in risks is foreseeable and consequential;

(3) Current or projected declines in the capital held by a regulated entity;

(4) The state of a regulated entity's compliance with regulations, written orders, or agreements;

(5) Unsafe or unsound operations or practices, or circumstances that reflect unsafe and unsound conduct by a regulated entity;

(6) Housing finance market conditions;

(7) Level of reserves or retained earnings;

(8) Initiatives, operations, products, or practices that entail heightened risk;

(9) With respect to a Bank, the ratio of the market value of its equity to the par value of its capital stock; or

(10) Other conditions as detailed by the Director in the notice provided under § 1225.3.

(11) In making a finding under this section, the Director may require a written plan to augment capital to be submitted on a timely basis to address the methods by which such temporary increase may be attained and the time period for reaching the new temporary minimum capital level.

(b) *Rescission of a Temporary Increase.* In making a determination to rescind a temporary increase in the minimum capital level, whether in full or in part, the Director shall consider the following standards:

(1) Changes to the circumstances or facts that led to the imposition of a temporary increase in the minimum capital levels;

(2) The meeting of targets set for a regulated entity in advance of any capital or capital-related plan agreed to by the Director;

(3) Changed circumstances or facts based on new developments occurring since the imposition of the temporary increase in the minimum capital level, particularly where the original problems or concerns have been successfully addressed or alleviated in whole or in part; or

(4) Such other standard as the Director may consider as detailed by the Director in the notice provided under § 1225.3.

(c) *Time Frame for Review of Temporary Increase for Purpose of Rescission.* (1) Absent an earlier determination to rescind in whole or in part a temporary increase in the minimum capital level for a regulated entity or entities, the Director shall no less than every 12 months, consider the need to maintain, modify, or rescind such increase.

(2) A regulated entity or regulated entities may at any time request in writing such review by the Director.

(d) *Guidances.* The Director may determine, from time to time, issue guidance to elaborate, to refine or to provide new information regarding standards or procedures contained herein.

Dated: January 31, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–2677 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0033; Directorate Identifier 2009–NM–099–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 767 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model 767 airplanes. The existing AD currently requires repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking, and corrective actions if necessary. This proposed AD would expand the inspection area to include the vertical inner chord at STA 1809.5. This proposed AD results from reported fatigue cracking in the vertical inner chord and the forward outer chord while doing the detailed inspection of the horizontal inner chord at STA 1809.5. We are proposing this AD to detect and correct fatigue cracking in the bulkhead structure at STA 1809.5 and the vertical inner chord at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by March 25, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Berhane Alazar, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0033; Directorate Identifier 2009–NM–099–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

On November 9, 2006, we issued AD 2006–24–04, Amendment 39–14833 (71 FR 68432, November 27, 2006), for all Model 767 airplanes. That AD requires repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking, and corrective actions if necessary. That AD resulted from fatigue cracks found in the forward outer chord and horizontal inner chord at STA 1809.5. We issued that AD to detect and correct cracking in the bulkhead structure at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

### Actions Since Existing AD Was Issued

Since we issued AD 2006–24–04, an operator reported fatigue cracking in the vertical inner chord found while doing the detailed inspection of the horizontal inner chord required by that AD. A surface HFEC inspection was done to confirm the crack. The crack was found on the right side of the structure at a fastener hole near buttock line (BL) 28.5, water line (WL) 257, common to both the horizontal and vertical inner chord. The vertical inner chord crack was found on an airplane with 28,234 total flight cycles.

### Relevant Service Information

AD 2006–24–04 refers to Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006, as the appropriate source of service information for the required actions. We have reviewed Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009. Revision 1 adds a surface HFEC inspection for the vertical inner chord, and clarifies the procedures for inspecting the horizontal inner chord. The service bulletin specifies a compliance time of before 15,000 total flight cycles or within 6,000 flight cycles after the previous PARTS 1–4 inspection, whichever occurs first, for the surface HFEC inspection for the vertical inner chord. The service bulletin also specifies a repeat interval 6,000 flight cycles thereafter for the surface HFEC inspection for the vertical inner chord.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–

24–04 and retain the requirements of the existing AD. This proposed AD would also require accomplishing the new actions specified in the revised service bulletin described previously.

**Change to Paragraph (i) of the Existing AD**

We have revised paragraph (i) of the existing AD to clarify that the modification of a forward outer chord may be done in accordance with Steps 4.A through 4.C and 4.G through 4.P of Repair 9, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 Structural Repair Manual (SRM), Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable. For a horizontal inner chord, modification may be done in accordance with Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable.

**Change to Paragraph (j)(3) of the Existing AD**

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces their previous designation as a Delegation Option Authorization (DOA) holder. We have revised paragraph (j)(3) of the existing AD (paragraph (n)(3) of this AD) to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA.

**Costs of Compliance**

There are about 975 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Repetitive inspections of STA 1805.5 (required by AD 2006–24–04). | 12 | $80 | None ..... | $960 per inspection cycle. | 354 | $339,840 per inspection cycle. |
| Inspection of inner chord (new proposed action). | 2 | $80 | None ..... | $160 per inspection cycle. | 354 | $56,640 per inspection cycle. |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify that the proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–14833 (71 FR 68432, November 27, 2006) and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2010–0033; Directorate Identifier 2009–NM–099–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by March 25, 2010.

**Affected ADs**

(b) This AD supersedes AD 2006–24–04, Amendment 39–14833.

**Applicability**

(c) This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

**Unsafe Condition**

(e) This AD results from reported fatigue cracking in the vertical inner chord while doing a detailed inspection of the horizontal inner chord. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the bulkhead structure at station (STA) 1809.5 and the vertical inner chord at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

**Restatement of Requirements of AD 2006–24–04, With New Service Information**

**Repetitive Inspections and Corrective Actions**

(g) Before the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after January 2, 2007 (the effective date of AD 2006–24–04), whichever is later: Do the detailed and high frequency eddy current (HFEC) inspections for cracking as specified in Parts 1, 2, 3, and 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; and do all corrective actions before further flight; by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; except as provided by paragraph (h) of this AD. After the effective date of this AD, use only Revision 1, dated March 12, 2009, of Boeing Alert Service Bulletin 767–53A0131. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 1, 2, 3, or 4, as applicable, of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; as applicable; terminates the repetitive inspections for that area only.

**Exceptions to Service Bulletin**

(h) If any cracking is found in the skin or in any structure other than the forward outer chord or horizontal inner chord during any inspection required by paragraph (g) or (k) of this AD, and Boeing Service Bulletin 767–53A0131, dated March 30, 2006; or Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

**Optional Terminating Action for the Repetitive Inspections Required by Paragraph (g) of this AD**

(i) If no cracking is found during the most recent detailed and HFEC inspections for a specified area as required by paragraph (g) of this AD: Modification of a specified area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, terminates the repetitive inspections required by paragraph (g) of this AD for that area only. Modification of a forward outer chord in accordance with Steps 4.A through 4.C and 4.G through 4.P of Repair 9, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 Structural Repair Manual (SRM), Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; also terminates the repetitive inspections required by paragraph (g) of this AD for that area. Modification of a horizontal inner chord in accordance with Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; also terminates the repetitive inspections required by paragraph (g) of this AD for that area.

**Credit for Previously Accomplished Repairs**

(j) Repair of a forward outer chord done before January 2, 2007, in accordance with Repair 9, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the requirements of paragraph (g) of this AD for that area only. Repair of a horizontal inner chord before January 2, 2007, in accordance with Repair 10, dated April 15, 2006, of Chapter 53–80–08 of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the requirements of paragraph (g) of this AD for that area only.

**New Requirements of This AD**

**Inspections**

(k) At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD, except as specified in paragraph (l) of this AD: Do the detailed and HFEC inspections for cracking as specified in Parts 5 and 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; and do all applicable corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 5 or 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, as applicable, terminates the repetitive inspections for that area only.

(1) 15,000 total flight cycles or 6,000 flight cycles after the inspection required by paragraph (g) of this AD, whichever occurs first.

(2) 30 days after the effective date of this AD.

**Exceptions to the Service Bulletin**

(l) Where Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, specifies a compliance time "after the date on the original issue of the service bulletin" or "after the date on Revision 01 of the service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

**Optional Terminating Action for the Repetitive Inspections Required by Paragraph (k) of This AD**

(m) If no cracking is found during the most recent detailed and HFEC inspections for a specified area as required by paragraph (k) of this AD: Modification of a specified area in accordance with a method approved by the Manager, Seattle ACO, FAA, terminates the repetitive inspections required by paragraph (k) of this AD for that area only.

**Note 1:** Guidance on modifying a vertical inner chord can be found in the service information identified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

| Steps— | Dated— | Of— |
|---|---|---|
| 4.A through 4.C and 4.G through 4.Q of Repair 11 ..... | August 15, 2008 ..... | Chapter 53-80–08 of the Boeing 767–200 SRM, Document D634T201. |
| 4.A through 4.C and 4.G through 4.Q of Repair 11 ..... | August 15, 2008 ..... | Chapter 53-80–08 of the Boeing 767–300 SRM, Document D634T210. |
| 4.A through 4.C and 4.G through 4.Q of Repair 11 ..... | August 15, 2008 ..... | Chapter 53-80–08 of the Boeing 767–300F SRM, Document D634T215. |
| 4.A through 4.C and 4.G through 4.Q of Repair 11 ..... | August 15, 2008 ..... | Chapter 53-80–08 of the Boeing 767–400 SRM, Document D634T225. |

**Alternative Methods of Compliance (AMOCs)**

(n)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Berhane Alazar, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2006–24–04 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on January 28, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–2685 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2010–0034; Directorate Identifier 2009–NM–120–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream 100 Airplanes, and Model Astra SPX and 1125 Westwind Astra Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Incomplete closure of the MED [main entry door] may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact. Damage to the left engine by flying debris and objects may also occur.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by March 25, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Gulfstream service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206; telephone 800–810–4853; fax 912–965–3520; e-mail *pubs@gulfstream.com*; Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* For Honeywell service information identified in this proposed AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, Arizona 85072–2170; telephone 602–365–5535; fax 602–365–5577; Internet *http://www.honeywell.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0034; Directorate Identifier 2009–NM–120–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On January 23, 2007, we issued AD 2007–03–05, Amendment 39–14916 (72 FR 4414, January 31, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–03–05, the Civil Aviation Administration of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 31–06–11–05, dated May 27, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

To increase pilots' awareness to the possibility of incomplete closure of the Main Entry Door (MED) by the following means:

1. Splitting the common caution light *CABIN DOOR* signaling both MED Improper Closure and MED Inflatable Seal Failure into two separate lights: *CABIN DOOR* and *CABIN DOOR SEAL.*

2. Converting the separated CABIN DOOR Caution light into a Warning light by changing its color to red.

**Note:** Aircraft Flight Manuals (AFM'S) refer to these changes as MOD G1–20052.

Incomplete closure of the MED may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact.

Damage to the left engine by flying debris and objects may also occur. Required actions include modifying the warning and caution lights panel (WACLP), changing the WACLP and MED wiring, changing the wiring harness connecting the MED to the WACLP, and ensuring the Log of Modification of the AFM includes reference to MOD G1–20052. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Gulfstream has issued Service Bulletin 100–31–284, dated August 17, 2006. Honeywell has issued Service Bulletin 80–0548–31–0002, dated March 1, 2006; Service Bulletin 80–5090–31–0001, dated March 1, 2006; and Service Bulletin 80–0548–31–0001, dated April 1, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 120 products of U.S. registry.

The actions that are required by AD 2007–03–05 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $80 per product.

We estimate that it would take about 60 additional work-hours per product to comply with the new basic requirements of this proposed AD. Required parts would cost about $600 per product. The average labor rate is $80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $648,000, or $5,400 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–14916 (72 FR 4414, January 31, 2007) and adding the following new AD:

**Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.):** Docket No. FAA–2010–0034; Directorate Identifier 2009–NM–120–AD.

**Comments Due Date**

(a) We must receive comments by March 25, 2010.

**Affected ADs**

(b) The proposed AD supersedes AD 2007–03–05, Amendment 39–14916.

**Applicability**

(c) This AD applies to Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra airplanes; certificated in any category; all serial numbers.

**Subject**

(d) Air Transport Association (ATA) of America Code 31: Instruments.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

To increase pilots' awareness to the possibility of incomplete closure of the Main Entry Door (MED) by the following means:

1. Splitting the common caution light *CABIN DOOR* signaling both MED Improper Closure and MED Inflatable Seal Failure into two separate lights: *CABIN DOOR* and *CABIN DOOR SEAL.*

2. Converting the separated *CABIN DOOR* Caution light into a Warning light by changing its color to red.

NOTE: Aircraft Flight Manuals (AFM'S) refer to these changes as MOD G1–20052.

Incomplete closure of the MED may be followed by in-flight opening of the door. As a result, the MED and the adjacent fuselage structure may be damaged during opening and landing impact.

Damage to the left engine by flying debris and objects may also occur.

Required actions include modifying the warning and caution lights panel (WACLP), changing the WACLP and MED wiring, changing the wiring harness connecting the MED to the WACLP, and ensuring the Log of Modification of the AFM includes reference to MOD G1–20052.

**Restatement of Requirements of AD 2007–03–05, With No Changes:**

(f) Unless already done, do the following actions. Within 10 days after February 15, 2007 (the effective date of AD 2007–03–05), amend Section IV, Normal Procedures, of the following Gulfstream airplane flight manuals (AFMs): Model 1125 Astra, 25W–1001–1; Model Astra SPX, SPX–1001–1; and Model G100, G100–1001–1; as applicable; to include the following statement. Insertion of copies of this AD at the appropriate places of the AFMs is acceptable.

"1. BEFORE ENGINE START:

(PRE and POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

CABIN DOOR—CLOSED (Physically verify door latch handle pin is fully engaged in the handle lock)

2. BEFORE TAXIING:

Change the CABIN DOOR procedure as follows (POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT

3. BEFORE TAKE-OFF:

Insert between the POSITION lights switch and the THRUST LEVERS procedures:

(PRE Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT (50% N1 may be required)

(POST Mod 20052/Gulfstream Service Bulletin 100–31–284):

Check CABIN DOOR light—OUT

CABIN DOOR SEAL light—OUT (50% N1 may be required)"

**Note 1:** Mod 20052 is equivalent to Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

**Note 2:** This AD may be accomplished by a holder of a Private Pilot's License.

**New Requirements of This AD**

**Actions and Compliance**

(g) Unless already done, for all airplanes except airplane serial number 158, do the following actions.

(1) Within 250 flight hours after the effective date of this AD: Modify the WACLP in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

TABLE 1—MODIFICATION SERVICE INFORMATION

| Honeywell Service Bulletin— | Dated— |
|---|---|
| 80–0548-31-0001 ..... | April 1, 2006. |
| 80–0548–31–0002 ... | March 1, 2006. |
| 80–5090–31–0001 ... | March 1, 2006. |

(2) Within 250 flight hours after the effective date of this AD: Change the WACLP and MED wiring in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(3) Within 250 flight hours after the effective date of this AD: Change the wiring harness connecting the MED to the WACLP in accordance with the Accomplishment Instructions of Gulfstream Service Bulletin 100–31–284, dated August 17, 2006.

(4) Within 250 flight hours after the effective date of this AD: Verify that the Log of Modification of the relevant airplane flight manual (AFM) includes reference to MOD G1–20052, and, if no reference is found, revise the Log of Modification of the AFM to include reference to the modification.

(5) Doing the modifications in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD terminates the requirements of paragraph (f) of this AD, and after the modifications have been done, the AFM limitation required by paragraph (f) of this AD may be removed from the AFM.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows: Paragraph (g)(5) of this AD mandates a terminating action. However, Israeli AD 31–06–11–05, dated May 27, 2009, does not explicitly mandate a terminating action. This difference has been coordinated with the Civil Aviation Authority of Israel.

**Other FAA AD Provisions**

(h) The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

*(2) Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

*(3) Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(i) Refer to MCAI Israeli Airworthiness Directive 31–06–11–05, dated May 27, 2009, and the service information identified in Table 2 of this AD for related information.

TABLE 2—SERVICE INFORMATION

| Service Information | Date |
|---|---|
| Gulfstream Service Bulletin 100–31–284. | August 17, 2006. |
| Honeywell Service Bulletin 80–0548–31–0001. | April 1, 2006. |
| Honeywell Service Bulletin 80–0548–31–0002. | March 1, 2006. |
| Honeywell Service Bulletin 80–5090–31–0001. | March 1, 2006. |

Issued in Renton, Washington, on January 28, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–2686 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2010–0032; Directorate Identifier 2009–NM–213–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. This proposed AD would require a one-time installation of electrical bonding jumpers for the fill valve controllers of fuel tanks. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent point-of-contact arcing or filament heating damage in the fuel tanks, which could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by March 25, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0032; Directorate Identifier 2009–NM–213–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Fuel system reviews conducted by the manufacturer revealed that fill valve controller installations had inadequate electrical bonding. This could allow point-of-contact arcing or filament heating damage in the fuel tanks. Installing electrical bonding jumpers from the fill valve controllers to airplane structure will provide a grounding path in the event of a fault current occurrence in the fill valve controller. If not corrected, a high current occurrence could result in a potential source of ignition and consequent fire or explosion.

**Relevant Service Information**

We have reviewed Boeing Service Bulletins DC10–28–249, Revision 1, dated November 6, 2008; and MD11–28–135, Revision 1, dated November 6, 2008. The service bulletins describe procedures for a one-time installation of electrical bonding jumpers for the fill valve controllers of the fuel tanks. Depending on the airplane configuration, the fuel tanks include left wing outboard leading edge; right wing inboard leading edge; right wing outboard leading edge; center wing lower auxiliary fuel tank; center wing upper auxiliary fuel tank; tail tank horizontal stabilizer front spar; wing fuel tanks 1, 2, and 3; upper and lower auxiliary fuel tank; aft auxiliary fuel tank; and forward and aft body tanks.

**FAA's Determination and Requirements of This Proposed AD**

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

We estimate that this proposed AD would affect 267 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Installation ..... | 8 to 24 [1] ..... | $85 | $1,459 to $3,805 [1] | $2,139 to $5,845 [1] | 267 | $571,113 to $1,560,615 [1] |

[1] Depending on airplane group or model.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**McDonnell Douglas Corporation:** Docket No. FAA–2010–0032; Directorate Identifier 2009–NM–213–AD.

**Comments Due Date**

(a) We must receive comments by March 25, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 28: Fuel.

**Unsafe Condition**

(e) This AD results from fuel system reviews conducted by the manufacturer which revealed that fill valve controller installations had inadequate electrical bonding. The Federal Aviation Administration is issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel tanks which could result in fuel tank explosions and consequent loss of the airplane.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Installation**

(g) Within 60 months after the effective date of this AD, install electrical bonding jumpers for the fill valve controllers of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–249, Revision 1, dated November 6, 2008 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD10–10F, MD–10–30F airplanes); or MD11–28–135, Revision 1, dated November 6, 2008 (for Model MD–11 and MD–11F airplanes).

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on January 28, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–2687 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–1213; Directorate Identifier 2009–NM–097–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Corporation Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Corporation Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This proposed AD would require repetitive inspections for cracking of the lower rear spar caps of the wings, and related investigative and corrective actions if necessary. This AD would also require repetitive inspections of certain repaired areas. This proposed AD results from reports of cracking of the wing rear spar lower cap at the outboard flap and inboard drive hinge at station Xrs=164.000; the cracking is due to material fatigue from normal flap operating loads. We are proposing this AD to detect and correct such fatigue cracking, which could result in fuel leaks, damage to the wing skin or other structure, and consequent reduced structural integrity of the wing.

**DATES:** We must receive comments on this proposed AD by March 25, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1213; Directorate Identifier 2009–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

We have received reports of an inspection for fuel leaks that revealed cracking of the wing rear spar lower cap at the outboard flap and inboard drive hinge at station Xrs=164.000. The manufacturer determined that the cracks are the result of material fatigue from normal flap operating loads. Inspecting this area for cracks will prevent crack migration and ensure repairs are done before further damage occurs. Such fatigue cracking, if not detected and corrected in a timely manner, could result in fuel leaks, damage to the wing skin or other structure, and consequent reduced structural integrity of the wing.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009. For Group 1, Configuration 2, and Group 2 airplanes: The service bulletin describes procedures for repetitive eddy current testing high frequency (ETHF) inspections for cracking of the lower rear spar caps of the wings, and related investigative and corrective actions if necessary. The related investigative action is an ETHF inspection for cracking of the upper rear spar cap of the wings. The corrective actions include doing a temporary repair of the lower rear spar cap, doing a temporary repair of the upper and lower rear spar cap, and contacting Boeing for repair instructions and doing the repair. The service bulletin also describes procedures for repetitive ETHF inspections of any temporary repair, and corrective actions if necessary. The service bulletin specifies that no action is necessary for Group 1, Configuration 1, airplanes.

The recommended compliance time for the initial inspection of the lower rear spar caps of the wings is before the accumulation of 30,000 total flight cycles or within 3,360 flight cycles after the issue date on the service bulletin, whichever occurs later. The recommended repetitive inspection interval is 2,650 flight cycles for airplanes on which no cracking is found. The recommended compliance

time for the initial inspection of a temporary repair area is 11,000 flight cycles after the repair is done. The service bulletin specifies that post-repair inspections be repeated at intervals not to exceed 7,000 flight cycles. The related investigative and corrective actions are done before further flight.

**FAA's Determination and Requirements of This Proposed AD**

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Bulletin."

**Difference Between the Proposed AD and Service Bulletin**

The service bulletin specifies that you may contact the manufacturer for repair instructions if the crack length is longer than 2.0 inches or is located in the rear spar cap forward horizontal leg radius. In addition, the service bulletin does not provide corrective action if any crack is found (less than or greater than 2.0 inches) in a temporary repair during the repetitive inspections. This proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the FAA to make those findings.

**Costs of Compliance**

We estimate that this proposed AD would affect 670 airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $214,400, or $320 per product, per inspection cycle.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866,

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**McDonnell Douglas Corporation:** Docket No. FAA–2009–1213; Directorate Identifier 2009–NM–097–AD.

**Comments Due Date**

(a) We must receive comments by March 25, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Corporation Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Unsafe Condition**

(e) This AD results from reports of cracking of the wing rear spar lower cap at the outboard flap and inboard drive hinge at station Xrs=164.000; the cracking is due to material fatigue from normal flap operating loads. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking, which could result in fuel leaks, damage to the wing skin or other structure, and consequent reduced structural integrity of the wing.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Repetitive Inspections and Related Investigative and Corrective Actions**

(g) At the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, do the actions required by paragraphs (g)(1) and (g)(2) of this AD, except as required by paragraph (h) of this AD.

(1) Do initial and repetitive eddy current testing high frequency (ETHF) inspections for cracking of the lower rear spar caps of the wings, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, except as required by paragraph (i) of this AD.

(2) Do initial and repetitive ETHF inspections for cracking of any temporary repairs, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, except as required by paragraph (j) of this AD.

**Exceptions to Service Bulletin Specifications**

(h) Where Boeing Alert Service Bulletin MD80–57A242, dated May 8, 2009, specifies a compliance time after the date of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) If any crack is found during any inspection required by this AD and Boeing Alert Service Bulletin MD80–57A242, dated

May 8, 2009, specifies contacting Boeing for repair: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) If any crack is found during any inspection of a temporary repair, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Issued in Renton, Washington, on January 28, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–2688 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 61 and 121

**[Docket No. FAA–2010–0100; Notice No. 10–02]**

**RIN 2120–AJ67**

## New Pilot Certification Requirements for Air Carrier Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** This advance notice of proposed rulemaking requests public comment on possible changes to regulations relating to the certification of pilots conducting domestic, flag, and supplemental operations. The purpose of this notice is to gather information on whether current eligibility, training, and qualification requirements for commercial pilot certification are adequate for engaging in such operations. The FAA may use this information to determine the necessity of establishing additional pilot certification requirements and to determine what those new requirements might include.

**DATES:** Send your comments on or before April 9, 2010.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–0100 using any of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Hand Delivery:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Craig Holmes, Certification and General Aviation Operations Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–5385; e-mail to *craig.holmes@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the initiatives in this document. The most helpful comments reference a specific question number, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this initiative, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this initiative in light of the comments we receive.

### Availability of Rulemaking Documents

*You can get an electronic copy using the Internet by:*

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov*;

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. This ANPRM is promulgated under the

authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

**Background**

The Federal Aviation Administration is initiating this rulemaking project to request recommendations from the public to improve pilot performance and professionalism, issues which were also highlighted in the Colgan Air (dba Continental Airlines Express) DHC–8 accident that occurred on February 12, 2009, outside of Buffalo, New York. The accident focused attention on whether a commercially-rated copilot in part 121 operations receives adequate training. Specifically, does a copilot's training include enough hours of training in various weather conditions to be able to recognize a potentially dangerous situation and respond in a safe and timely manner. The FAA requests recommendations on whether the existing flightcrew eligibility, training, and qualification requirements should be increased for commercial pilots engaged in part 121 operations.

In issuing this ANPRM, the FAA notes that we are currently considering public comments to a notice of proposed rulemaking on the Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (74 FR 1280; January 12, 2009). It proposed to enhance traditional training programs for air carrier crewmember and dispatcher training by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. That NPRM did not address basic 14 CFR part 61 pilot certification. This ANPRM is seeking comments on issues relating to basic part 61 pilot certification, not air carrier hiring or training requirements. Additionally, we are not seeking comment on other existing part 121 requirements such as Pilot Record Improvement Act (PRIA), drug and alcohol testing, mentoring, or crew pairing.

**General Discussion and Request for Information**

In this ANPRM, the FAA requests comments and recommendations on the following concepts for the purpose of reviewing current pilot certification regulations. The sequence of these proposals does not reflect any specific FAA preference. When submitting comments on any of these concepts, please refer to the specific question number.

1. *Requirement for all pilots employed in part 121 air carrier operations to hold an Airline Transport Pilot (ATP) certificate with the appropriate aircraft category, class, and type rating, or meet the aeronautical experience requirements of an ATP certificate:*

Section 61.155 describes the aeronautical knowledge required to qualify for an ATP certificate. Section 61.159 describes the aeronautical experience requirements, which specify a minimum of 1,500 flight hours. Currently, a pilot who serves as a Second-in-Command (SIC) pilot crewmember is required to hold an instrument rating and commercial pilot certificate. We request comments and recommendations on the following issues relating to the option of requiring ATP certificates for all pilot crewmembers in part 121 air carrier operations:

1A. Should the FAA require all pilot crewmembers engaged in part 121 air carrier operations to hold an ATP certificate? Why or why not?

1B. If a part 121 air carrier pilot does not hold an ATP certificate, should he or she nevertheless be required to meet the ATP certificate aeronautical knowledge and experience requirements of § 61.159, even if he or she is serving as SIC? Why or why not?

2. *Academic Training as a Substitute for Flight Hours Experience:*

The FAA seeks public comment on the concept of permitting academic credit in lieu of required flight hours or experience.[1] In particular, we request comments on the following issues:

2A. Are aviation/pilot graduates from accredited aviation university degree programs likely to have a more solid academic knowledge base than other pilots hired for air carrier operations? Why or why not?

2B. Should the FAA consider crediting specific academic study in lieu of flight hour requirements? If so, what kind of academic study should the FAA accept, and to what extent should academic study (*e.g.,* possession of an aviation degree from an accredited four-year aviation program) substitute for flight hours or types of operating experience?

2C. If the FAA were to credit academic study (*e.g.,* possession of an aviation degree from an accredited four-year aviation program and/or completion of specific courses), should the agency still require a minimum number of flight hours for part 121 air carrier operations? Some have suggested that, regardless of academic training, the FAA should require a minimum of 750 hours for a commercial pilot to serve as SIC in part 121 operations. Is this number too high, or too low, and why?

3. *Endorsement for Air Carrier Operations:*

The FAA believes that, although the flight hours required to qualify for an ATP certificate can benefit pilots, experience is not measured in flight time alone. Other factors, such as certain types of academic training, practical training/experience, and experience in a crew environment, are also important. A pilot's skills and abilities may also be enhanced by exposure to specific operational conditions, including icing, high altitude operations, and other areas common to part 121 air carrier operations.

An endorsement on a commercial pilot certificate may be an option for addressing concerns about the operational experience of newly-hired pilots engaged in air carrier/commercial operations. Under this concept, a commercial pilot would not be able to serve as a required pilot in part 121 air carrier operations without having obtained an endorsement attesting to successful completion of additional training and qualified operating experience.

The FAA is therefore considering the creation of a 14 CFR 61.31 endorsement for a commercial pilot certificate that would require specific ground and flight training, as well as additional experience in specific areas, in order to receive part 121 air carrier operating privileges. The additional training for the endorsement could include operating experience in a crew environment, training and exposure to icing, and flight experience in high altitude operations. The current § 61.31(g) endorsement for additional training for operating pressurized aircraft capable of operating at high altitudes might serve as a model. Additionally, the FAA may consider the type-specific aircraft training endorsement in § 61.31(h) as a model. The FAA believes that an endorsement approach would target specific skill sets needed for part 121 operations, and

[1] On October 14, 2009, the U.S. House of Representatives passed bill H.R. 3371, the Airline Safety and Pilot Training and Improvement Act of 2009. The bill is currently being considered by the Senate Committee on Commerce, Science, and Transportation. Under this bill, all flight crewmembers who are engaged in part 121 air carrier operations would be required to hold an ATP certificate. The bill includes a provision that would allow credit toward flight hours for an ATP certificate for specific academic training courses, if the Administrator determines that the academic training courses will enhance safety more than requiring full compliance with the flight hours requirement.

establish the associated standards for content and quality of training. The FAA notes that the endorsement option would also eliminate the time-based requirements that aviation universities argue is not a reasonable requirement for graduates of their four-year aviation degree programs.

We request comments on the following issues regarding the possibility of establishing an endorsement for SIC privileges in part 121:

3A. Should the FAA propose a new commercial pilot certificate endorsement that would be required for a pilot to serve as a required pilot in part 121 air carrier operations? Why or why not?

3B. If so, what kinds of specific ground and flight training should the endorsement include?

3C. The FAA expects that a new endorsement would include additional flight hour requirements. At a minimum, the FAA requests comments on how many hours should be required beyond the minimum hours needed to qualify for a commercial pilot certificate. Some have suggested that the FAA require a minimum of 750 hours for a commercial pilot to serve as SIC in part 121 operations. Is this number too high, or too low, and why?

3D. The FAA is considering proposing to require operating experience in a crew environment, in icing conditions, and at high altitude operations. What additional types of operating experience should an endorsement require?

3E. Should the FAA credit academic training (*e.g.,* a university-awarded aviation degree) toward such an endorsement and, if so, how might the credit be awarded against flight time or operating experience? We are especially interested in comments on how to balance credit for academic training against the need for practical operating experience in certain meteorological conditions (*e.g.,* icing), in high-altitude operations, and in the multi-crew environment.

4. *New additional authorization on an existing pilot certificate:*

The FAA may also consider proposing a new authorization on a commercial pilot certificate for any pilot employed as a required flight crewmember for part 121 operations. This new authorization would be limited to a specific part 121 operator, and would be issued only after the pilot successfully completed that part 121 operator's approved training and qualification program. The pilot would surrender this authorization upon leaving the employ of the specific part 121 operator. The purpose of such an authorization would be to ensure that each air carrier has provided its pilot employees with the training and qualifications specific to its operating environment (*e.g.,* aircraft, routes, meteorological conditions). The FAA seeks comments on the following question:

4A. Would a carrier-specific additional authorization on an existing pilot certificate improve the safety of part 121 operations? Why or why not?

4B. Should the authorization apply only to a pilot who holds a commercial certificate, or should it also apply to the holder of an ATP certificate?

4C. Should such an authorization require a minimum number of flight hours? If so, how many hours should be required?

*5.Other actions:*

The FAA is seeking comment on whether existing monitoring, evaluation, information collection requirements, and enforcement associated with current pilot performance could be modified to achieve improved pilot performance.

5A. Can existing monitoring, evaluation, information collection requirements, and enforcement associated with pilot performance be modified to improve pilot performance?

5B. If so, what specific modifications should be considered?

**Regulatory Notices**

*A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

We are soliciting comments on the potential costs and benefits on the initiatives in this ANPRM. This ANPRM has been reviewed by the Office of Management and Budget and is considered "significant" under the Department of Transportation's Regulatory Policies and Procedures.

*B. Executive Order 13132 (Federalism)*

This ANPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Any rulemaking proposal resulting from this notice would not propose any regulations that would (1) have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) impose substantial direct compliance costs on State and local governments, or (3) preempt state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review rulemakings to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact that these initiatives may have on small entities.

Issued in Washington, DC, on February 2, 2010.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. 2010–2643 Filed 2–4–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 31, and 301

**[REG–101896–09]**

**RIN 1545–BI66**

## Basis Reporting by Securities Brokers and Basis Determination for Stock

*Correction*

In proposed rule document E9–29855 beginning on page 67010 in the issue of Thursday, December 17, 2009, make the following corrections:

1. On page 67020, in the second column, under heading 13., in the second line, "exempt", should read "except".

**§1.6045B–1 [Corrected]**

2. On page 67041, in §1.6045B–1(f)Example 1(iii), in the fifth line, "sites" should read "site".

[FR Doc. C1–2009–29855 Filed 2–5–10; 8:45 am]

**BILLING CODE 1505–01–D**

# Notices

Federal Register
Vol. 75, No. 25
Monday, February 8, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Notice of a Request for Extension of a Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act, this notice announces the Foreign Agricultural Service's intention to request an extension for a currently approved information collection in support of the regulations governing the entry of raw cane sugar under the tariff-rate quota (TRQ) into the United States.

**DATES:** Comments on this notice must be received by no later than April 9, 2010 to be assured of consideration.

*Additional Information and Comments:* Contact William Janis, International Economist, Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1021, 1250 Maryland Avenue, SW., Washington, DC 20250–1021; or by telephone (202) 720–2194; by fax to (202) 720–0876; or by e-mail *William.Janis@fas.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate of Quota Eligibility.

*OMB Number:* 0551–0014.

*Expiration Date of Approval:* May 31, 2010.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The provisions of paragraph (b)(iv) of the Additional U.S. note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), established by Presidential Proclamation 6763 of December 1994, authorizes the Secretary of Agriculture to establish for each fiscal year the quantity of sugars and syrups that may be entered at the lower tariff rates of TRQs. The TRQs cover sugars and syrups described in HTS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.90 and 2106.90. This authority was proclaimed by the President to implement the results of the Uruguay Round of multilateral trade negotiations as reflected in the provisions of Schedule XX (United States), annexed to the Agreement establishing the World Trade Organization. The terms under which Certificates for Quota Eligibility (CQEs) will be issued to foreign countries that have been allocated a share of the TRQ are set forth in 15 CFR Part 2011, Allocation of Tariff-Rate Quota on Imported Sugars, Syrups, and Molasses, Subpart A—Certificates of Quota. The authority for issuing CQEs is Additional U.S. Note 5(b)(iv) to chapter 17 of the HTS. The regulation, promulgated by the United States Trade Representative, provides for the issuance of CQEs by the Secretary of Agriculture and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from a warehouse for consumption at the in-quota duty rates unless such sugar is accompanied by a CQE.

CQEs are issued to foreign countries by the Director of the Import Policies and Export Reporting Division, Foreign Agriculture Service, or his or her designee. The issuance of CQEs is in such amounts and at such times as the Director determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account harvesting periods, U.S. import requirements, and other relevant factors. The information required to be collected on the CQE is used to monitor and control the imports of raw cane sugar. Proper completion of the CQE is mandatory for those foreign governments that are eligible and elect to export raw cane sugar to the United States under the TRQ.

*Estimate of burden:* The public reporting burden for the collection directly varies with the number of CQEs issued.

*Respondents:* Foreign governments.

*Estimated number of respondents:* 40 (i.e., number of countries receiving a TRQ allocation).

*Estimated number of responses per respondent:* 30 per fiscal year.

*Estimated total number of forms:* 1,200.

*Estimated burden hours per response:* 0.1667 hour (10 minutes).

*Estimated total annual burden hours for respondents:* 200 hours.

*Requests for Comments:* Send comments regarding (a) Whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection may be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Comments may be sent to William Janis, International Economist, Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1021, 1250 Maryland Avenue, SW., Washington, DC 20024–1021; or by telephone (202) 720–2194; or by e-mail: *William.Janis@fas.usda.gov.* All comments received will be available for public inspection in Room PB435–B at the above address. Persons with disabilities who require an alternative means of communication for information (Braille, large print, audiotape, etc.) should contact USDA's target center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record. FAS is committed to complying with the Government Paperwork Elimination Act which requires Government agencies, to the maximum extent feasible, to provide the public the option of electronically submitting information collection. CQEs permit exporters to ship raw cane sugar to the United States at the U.S. price, which is ordinarily significantly higher than the world price for raw cane sugar. Therefore, in contrast to most information collection documents, CQEs

have a monetary value equivalent to the substantial benefits to exporters who can fill their raw cane sugar allocations under the TRQ. CQEs have always been carefully handled as secure documents, and issued only to foreign government-approved certifying authorities. The Department does not plan to make CQEs available electronically in order to prevent a potential proliferation of invalid CQEs, which could undermine the integrity of the TRQ system.

Signed at Washington, DC, on February 1, 2010.

**John D. Brewer,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 2010–2695 Filed 2–5–10; 8:45 am]

**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Angeles National Forest, California; Tehachapi Renewable Transmission Project, Supplemental Draft EIS

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement.

**SUMMARY:** The Forest Service will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) to assess the impacts of the Station Fire and other project changes affecting National Forest System (NFS) lands. After the public review period for the SDEIS, the Forest Service will issue its Final EIS. Following release of the Final EIS, the Forest Service will issue a Record of Decision (ROD) to document the decision to either approve or deny the requested Special Use authorization for the Project in response to the application received from Southern California Edison for construction of a series of transmission system improvements to deliver electricity from new wind energy projects in eastern Kern County. The proposed project would be located in Kern, Los Angeles, and San Bernardino counties. The purpose of the project is to provide the electrical facilities necessary to reliably interconnect and integrate in excess of 700 megawatts (MW) and up to approximately 4,500 MW of new wind generation in the Tehachapi Wind Resource Area, currently being planned or expected in the future, thereby assisting SCE and other California utilities to comply with California's Renewables Portfolio Standard (RPS) goals in an expedited manner. It would also further address the reliability needs of the California Independent System Operator (CATS 0) controlled grid due to projected load growth in the Antelope Valley, and address existing constraints in the transmission system south of the Lugo Substation in Hesperia, California. As the NEPA Lead Agency for the project, the USDA Forest Service will conduct a detailed review of the impacts of the Station Fire which burned approximately 251 square miles of NFS lands in the Angeles National Forest between August 26, 2009 and October 16, 2009. The burned area includes portions of Segments 6 and 11 of the project. An estimated 75% of the project area on National Forest lands was affected.

Changes to the affected environment will be addressed to assess the impacts of the Station Fire. In addition, project changes affecting NFS lands, which may include new helicopter landing/staging sites (a.k.a. fly-yards), pulling/splicing locations, alternate access roads, and changes in tower design will be analyzed in the SDEIS. The USDA Forest Service is providing notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision on the TRTP by the Forest Service.

**DATES:** The SDEIS is expected to be published May 1, 2010. A 45-day comment period will occur following publication of an NOA in the **Federal Register.** Based on this schedule, comments on the information contained in the SDEIS would need to be received by June 15, 2010. The Final EIS is anticipated in September 2010. Project scoping was held in 2007. No additional scoping effort will occur as part of the SDEIS preparation process.

**ADDRESSES:** To request a copy of the SDEIS or Final ETS and/or to send written comments, please write to the Angeles National Forest, c/o Aspen Environmental Group, 30423 Canwood Street, Suite 215, Agoura Hills, CA 91301. Alternately, electronic comments may be sent to *TRTP@aspeneg.com.* Electronic comments must be submitted as part of the actual e-mail message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf). Information about the Supplemental EIS and the environmental review process will be posted on the Internet at: *http://www.fs.fed.us/r5/angeles/projects/.* This site will be used to post links to all public documents during the Supplemental EIS process.

**FOR FURTHER INFORMATION CONTACT:** Justin Seastrand, Special Uses Coordinator, Forest Service, Angeles National Forest, 701 N. Santa Anita Ave., Arcadia, CA 91006, phone: (626) 574–5278. For additional information related to the project on non-NFS lands, contact John Boccio, California Public Utilities Commission (CNJC), .505 Van Ness Avenue, San Francisco, CA 94102; phone: (415) 703–2641. Project information can also be requested by leaving a voice message or sending a fax to the Project Information Hotline at (888) 331–9897.

*Responsible Official:* The responsible official will be Jody Noiron, Forest Supervisor, Angeles National Forest, 701 North Santa Anita Avenue, Arcadia, CA, 91006.

**SUPPLEMENTARY INFORMATION:** Lead and Cooperating Agencies. The USDA Forest Service is the lead agency, in accordance with 40 CFR 1501.5(b), and is responsible for the preparation of the SDEIS and Final EIS. The Army Corps of Engineers is a cooperating agency.

Comment. A SDETS will be prepared and available for public comment. The comment period on the SDEIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability (NOA) in the **Federal Register.** To assist the Forest Service in identifying and considering issues and concerns on the analysis of the changed environmental conditions due to the Station Fire and project changes since the publication of the Draft EIS, comments on the SDEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the SDEIS.

Comments may also address the adequacy of the SDEIS. Comments received on the SDEIS, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that

the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)1. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this process participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft and supplemental draft EIS's. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Angeles National Forest. The responsible official will decide whether and how to issue Special Use authorizations for the proposed project or alternatives. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Tehachapi Renewable Transmission Project decision and the reasons for the decision will be documented in the record of decision. That decision will he subject to Forest Service Appeal Regulations (35 CFR part 215).

Dated: January 27, 2010.

**Marty Dumpis,**

*Deputy Forest Supervisor.*

[FR Doc. 2010–2263 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* Wednesday, March 31, 2010 (9 a.m. to 3 p.m., times may be adjusted).

*Location:* Jack Morton Auditorium, Media and Public Affairs Building, George Washington University, 805 21st Street, NW., Washington, DC 20052.

Please note that this is the anticipated agenda and is subject to change.

*Keynote:* The Administrator will present an update from the front office of USAID, presenting his vision of USAID's role in the development world, plus an update on the Haiti humanitarian efforts.

The primary focus of the meeting will be on development partnerships and what USAID can do better in working with its development partners. There will be a panel discussion on this topic.

*Stakeholders.* The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *http://www.usaid.gov/about_usaid/acvfa* or with Ben Hubbard at *bhubbard@usaid.gov* or 202–712–4040.

Dated: January 29, 2010.

**Deborah Lewis,**

*Office of the Chief Operating Officer, U.S. Agency for International Development.*

[FR Doc. 2010–2641 Filed 2–5–10; 8:45 am]

**BILLING CODE 6116–01–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comment on a Commercial Availability Request Under the U.S.-Singapore Free Trade Agreement

February 2, 2010.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for modification of the U.S.-Singapore Free Trade Agreement (USSFTA) rules of origin for certain apparel articles

**SUMMARY:** On October 29, 2008, the Government of the United States received a request from the Government of Singapore for consultations under Article 3.18.4(a)(i) of the USSFTA. Singapore is seeking agreement to revise the rules of origin for certain apparel articles to address availability of supply of certain fabrics in the territories of the Parties. The President may proclaim a modification to the USSFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Singapore on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by March 10, 2010 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 202(o)(2) of the United States—Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USSFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

### Background

Under the USSFTA, the Parties are required to progressively eliminate customs duties on originating goods. *See* Article 2.2. The USSFTA provides that, after consultations, the Parties may agree to revise the rules of origin for textile and apparel products to address issues of availability of supply of fibers, yarns, or fabrics in the free trade area. *See* Article 3.18.4. In the consultations, each Party must consider data presented by the other party showing substantial production in its territory of the particular good. Substantial production has been shown if domestic producers are capable of supplying commercial quantities of the good in a timely manner. *See* Article 3.18.4.

The USSFTA Implementation Act provides the President with the authority to proclaim modifications to the USSFTA rules of origin as are necessary to implement the Agreement after complying with the consultation and layover requirements of Section 103 of the USSFTA Implementation Act. *See* Section 202(o)(2). Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On October 29, 2008, the Government of the United States received a request from the Government of Singapore,

requesting that the United States consider whether the USSFTA rule of origin for apparel articles should be modified to allow for the use of certain non-U.S. and non-Singapore fabrics. The products covered by this request are:

**Specifications**

(1) Certain knit fabrics of rayon yarn made from bamboo, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTS), for use in apparel articles:

*Fabric 1*

*HTS Subheading:* 6004.10.00.
*Fiber Content:* 57% rayon made from bamboo/36% cotton/7% elastomeric.
*Yarn Number:* 51/1 metric (30/1) rayon made from bamboo and cotton; 225 metric (40 denier) spandex.
*Machine Gauge:* 24.
*Weight:* 250 g/m2 (7.4 oz/square yard).
*Width:* 132 centimeters (52 inches).
*Finish:* (Piece) dyed.

*Fabric 2*

*HTS Subheading:* 6004.10.00.
*Fiber Content:* 35% rayon made from bamboo/35% cotton/24% polyester/6% spandex.
*Yarn Number:* 40/1 metric (24/1) rayon made from bamboo and cotton; 180 metric/72 filaments (50 denier/72 filaments) polyester; 300 metric (30 denier) spandex.
*Machine Gauge:* 24.
*Weight:* 300 g/m2 (8.85 oz/square yard).
*Width:* 147.32 centimeters (58 inches).
*Finish:* (Piece) dyed.

*Fabric 3*

*HTS Subheading:* 6001.22.00.
*Fiber Content:* 79% rayon made from bamboo/15% polyester/6% spandex.
*Yarn Number:* 40/1 metric (24/1) rayon made from bamboo; 300 metric (30 denier) spandex.
*Machine Gauge:* 24.
*Weight:* 295 g/m2 (8.7 oz/square yard).
*Width:* 132 centimeters (52 inches).
*Finish:* (Piece) dyed.

(2) Certain knit fabrics of polyester fiber, of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*Fabric 1*

*HTS Subheading:* 6001.22.00.
*Fiber Content:* 93% polyester/7% spandex.
*Yarn Number:* 120 metric/72 filaments (75 denier/72 filaments) polyester; 300 metric (30 denier) spandex.
*Machine Gauge:* 24.
*Weight:* 255 g/m2 (7.52 oz/square yard).
*Width:* 139.7 centimeters (55 inches).
*Finish:* (Piece) dyed.

*Fabric 2*

*HTS Subheading:* 6004.10.00.
*Fiber Content:* 92% polyester [1]/8% spandex.
*Yarn Number:* 72/2 metric to 75/2 metric (125/2 to 120/2) polyester; 67.7/4 metric (40/4) spandex.
*Machine Gauge:* 24.
*Weight:* 300 g/m2 (8.85 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 3*

*HTS Subheading:* 6006.32.00.
*Fiber Content:* 100% polyester.[1]
*Yarn Number:* 72/2 metric to 75/2 metric (125/2 to 120/2).
*Machine Gauge:* 24.
*Weight:* 305 g/m2 (9 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 4*

*HTS Subheading:* 6001.22.00.
*Fiber Content:* 92% polyester [1]/8% spandex.
*Yarn Number:* 120 metric/144 filament (75 denier/144 filament) polyester and 72 metric to 75 metric (125 to 120); 273 metric (33 denier) spandex.
*Machine Gauge:* Not specified.
*Weight:* 270 g/m2 (7.97 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 5*

*HTS Subheading:* 6004.10.00.
*Fiber Content:* 90% polyester [1]/10% spandex.
*Yarn Number:* 120 metric/72 filaments (75 denier/72 filaments).
*Machine Gauge:* 28.
*Weight:* 255 g/m2 (7.52 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 6*

*HTS Subheading:* 6004.10.10.
*Fiber Content:* 90% polyester [1]/10% spandex.
*Yarn Number:* 120 metric/72 filaments (75 denier/72 filaments).
*Machine Gauge:* 26.
*Weight:* 310 g/m2 (9.15 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 7*

*HTS Subheading:* 6006.32.00.
*Fiber Content:* 100% polyester.[1]
*Yarn Number:* 120 metric/72 filaments (75 denier/72 filaments).
*Machine Gauge:* 32.
*Weight:* 255 g/m2 (7.52 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 8*

*HTS Subheading:* 6006.32.00.
*Fiber Content:* 100% polyester.[1]
*Yarn Number:* 120 metric/72 filaments (60 denier/72 filaments).
*Machine Gauge:* 28.
*Weight:* 310 g/m2 (9.15 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

(3) Certain knit fabrics containing fibers made from soya bean, of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*Fabric 1*

*HTS Subheading:* 6006.22.90.
*Fiber Content:* 60% cotton/40% soya bean.
*Yarn Number:* Not specified.
*Machine Gauge:* Not specified.
*Weight:* 330 g/m2 (9.74 oz/square yard).
*Width:* 152.4 centimeters (60 inches).
*Finish:* (Piece) dyed.

*Fabric 2*

*HTS Subheading:* 6004.10.00.
*Fiber Content:* 60% soya bean/35% cotton/5% spandex.
*Yarn Number:* 30/1 metric (18/1) soya bean and cotton; 225 metric (40 denier) spandex.
*Machine Gauge:* 24.
*Weight:* 210 g/m2 (6.2 oz/square yard).
*Width:* 157.5 centimeters (62 inches).
*Finish:* (Piece) dyed.

(4) Fabric fancy polyester filament fabric, of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:
*HTS Subheadings:* 5407.53.20.20 and 5407.53.20.60.
*Fiber Content:* 100% polyester.
*Width:* 58/60 inches.
*Construction:* Plain, twill and satin weaves, in combinations of 75 denier, 100 denier, 150 denier, and 300 denier yarn sizes, with mixes of 25% cationic/75% disperse, 50% cationic/50% disperse, and 100% cationic.
*Finish:* Containing at least three different yarns, each of which is dyed a different color.

[1] Singapore's request specifies recycled polyester.

(5) Certain woven 100% cotton flannel fabrics, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5208.43.00.

*Fiber Content:* 100% cotton.

*Yarn Number:* 84 to 86 metric warp and filling (49 to 51 English).

*Thread Count:* 39 to 66 warp ends per centimeter × 27 to 39 filling picks per centimeter (99 to 168 warp ends per inch × 68 to 99 filling picks per inch).

*Weave Type:* 3 or 4 thread twill.

*Weight:* 98 to 150 g/m2 (2.9 to 4.4 ounces per sq. yard).

*Finish:* Of yarns of different colors, yarns are dyed with fiber reactive dyes, plaids, checks and stripes, napped on both sides, pre-shrunk.

(6) Certain 2-way stretch woven fabrics, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5515.11.00.

*Fiber Content:* 60% to 75% polyester/20% to 35% viscose rayon/3% to 6% spandex.

*Fiber Length:* 51 to 70 millimeter staple (2 to 2.75 inches).

*Yarn Number:* Warp and filling: 50/2 to 68/2 metric wrapped around 225 metric spandex (30/2 to 40/2 wrapped around 40-denier spandex).

*Thread Count:* 30 to 32 warp ends × 24 to 26 filling picks per square centimeter (76 to 81 warp ends × 60 to 66 filling picks per square inch).

*Weave Type:* Various.

*Weight:* 220 to 250 g/m2 (6.5 to 7.4 oz/square yard).

*Width:* 142 to 148 centimeters (56 to 59 inches).

*Finish:* Dyed, of yarns of different colors.

(7) Certain woven two-way stretch fabrics, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5515.11.00.

*Fiber Content:* 60% to 75% polyester/20% to 35% viscose rayon/3% to 6% spandex.

*Staple Length:* 44 to 70 mm (1.75 to 2.75 inches).

*Yarn Number:* 40/2 to 84/2 metric wrapped.

*Warp and Filling:* Around 225 to 118 metric spandex (24/2 to 40/2 English wrapped around 40 to 70 denier spandex).

*Thread Count:* 24 to 44 warp ends × 16 to 32 filling picks per square centimeter.

*Weave Type:* Various.

*Weight:* 200 to 300 g/m2 (5.9 to 8.9 oz/square yard).

*Width:* 127 to 152 centimeters (50 to 60 inches).

*Finish:* (Piece) dyed and of yarns of different colors.

(8) Cotton/polyester three-thread circular knit fleece fabric, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 6001.21.

*Fiber Content:* 80% cotton/20% polyester.

*Yarn Number:* 1. Face yarn—100% combed cotton ring spun, 49/1 to 54/1 metric.

(29/1 to 32/1), in each of the following configurations:*

(a) 100% bleached or dyed cotton.

(b) 95% undyed cotton/5% dyed cotton.

(c) 90% undyed cotton/10% dyed cotton.

(d) 80% undyed cotton/20% dyed cotton.

(e) 70% undyed cotton/30% dyed cotton.

(f) 60% undyed cotton/40% dyed cotton.

(g) 50% undyed cotton/50% dyed cotton.

(h) 40% undyed cotton/60% dyed cotton.

(i) 30% undyed cotton/70% dyed cotton.

(j) 25% undyed cotton/75% dyed cotton.

(k) 20% undyed cotton/80% dyed cotton.

*The percentages stated above may vary by up to two percentage points.

2. Tie yarn—183 to 188/48 filament metric filament polyester (49 to 51/48 filament denier).

3. Fleece yarn—70% carded cotton/30% 3600 metric polyester staple, 26/1 to 30/1 metric ring spun (70% cotton/30% 4.0 denier polyester staple, 15.5/1 to 18/1 ring spun).

*Machine Gauge:* 21.

*Weight:* 247 to 258 g/m2 (7.3 to 7.5 oz/square yard).

*Width:* Not less than 152 centimeters cuttable (not less than 60 inches cuttable).

*Finish:* Napped on technical back; bleached; dyed; of yarns of different colors.

*Performance Criteria:* Not more than 5% vertical and horizontal shrinkage; not more than 4% vertical torque.

(9) Certain polyester/rayon/spandex two-way stretch woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*HTS Subheadings:* 5407.92.20 and 5407.93.20.

*Fiber Content:* 70% to 75% polyester/20% to 25% viscose rayon/3% to 6% spandex.

*Yarn Number:* Warp: 40/2 to 85/2 metric 60% to 75% polyester staple/20% to 35% viscose rayon staple wrapped around 225 to 126 metric spandex (24/2 to 50/2 wrapped around 40 to 70 denier spandex).

*Filling:* 90 to 45 metric filament polyester wrapped around 225 to 126 metric spandex (100 to 200 denier wrapped around 40 to 70 denier spandex).

*The stated size of the spandex yarns is in the condition as delivered to the yarn spinner. Variance may occur in the final fabric.

*Length of Staple in Warp:* 1.75 to 2.75 inches.

*Thread Count:* 152 to 285 warp ends per centimeter × 101 to 209 filling picks per centimeter (60 to 112 warp ends per inch × 40 to 82 filling picks per inch).

*Weave Type:* Various.

*Weight:* 200 to 302 g/m2 (5.9 to 8.9 oz/square yard).

*Width:* 129 to 152 centimeters (50 to 60 inches).

*Finish:* (Piece) dyed; of yarns of different colors.

(10) Certain circular knit three-end fleece, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 6001.21.

*Fiber Content:* 70% cotton/30% polyester.

*Yarn Number:* 1. Face yarn—100% combed cotton; 50/1 to 57/1 metric (30/1 to 34/1).

2. Tie yarn—100% filament polyester, 179 metric/48 filaments (50 denier/48 filaments).

3. Fleece yarn—60% combed cotton/40% polyester; 18/1 to 20/1 metric (9/1 to 12/1).

*Gauge:* 19.

*Weight:* 271 to 300 g/m2 (8.0 to 8.85 oz/square yard).

*Width:* 152 to 183 centimeters (60 to 72 inches).

*Finish:* (Piece) dyed; printed.

In addition, technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

—Vertical and horizontal shrinkage must be less than 5%.

—Torque may not exceed 4%.

—All fabrics must have a Class 1 flammability rating.

—For optimum fabric integrity and stitch definition, this fabric must be

knit on machines whose number of yarn feeds is a multiple of 3.

(11) Certain circular knit three-end fleece, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 6001.21.

*Fiber Content:* 70% cotton/30% polyester.

*Yarn Number:* 1. Face yarn—100% combed cotton; 50/1 to 57/1 metric (30/1 to 34/1).

2. Tie yarn—100% filament polyester; 179 metric/48 filaments (50 denier/48 filaments).

3. Fleece yarn—60% combed cotton/40% polyester; 18/1 to 20/1 metric (9/1 to 12/1).

*Gauge:* 21.

*Weight:* 271 to 300 g/m2 (8.0 to 8.85 oz/square yard).

*Width:* 152 to 183 centimeters (60 to 72 inches).

*Finish:* (Piece) dyed; printed.

In addition, the technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

—Vertical and horizontal shrinkage must be less than 5%.
—Torque may not exceed 4%.
—All fabrics must have a Class 1 flammability rating.
—For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

(12) Certain circular knit three-end fleece, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 6001.21.

*Fiber Content:* 70% cotton/30% polyester.

*Yarn Number:* 1. Face yarn—100% combed cotton; 47/1 to 57/1 metric (28/1 to 34/1).

2. Tie yarn—100% filament polyester; 120 metric/48 filaments (75 denier/36 filaments).

3. Fleece yarn—60% combed cotton/40% polyester; 17/1 to 24/1 metric (10/1 to 14/1).

*Gauge:* 18.

*Weight:* 271 to 300 g/m2 (8.0 to 8.85 oz/square yard).

*Width:* 152 to 183 centimeters (60 to 72 inches).

*Finish:* (Piece) dyed; printed.

In addition, the technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

—Vertical and horizontal shrinkage must be less than 5%.
—Torque may not exceed 4%.
—All fabrics must have a Class 1 flammability rating.
—For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

(13) Certain circular knit three end fleece, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 6001.21.

*Fiber Content:* 70% cotton/30% polyester.

*Yarn Number:* 1. Face yarn—100% combed cotton; 47/1 to 57/1 metric (28/1 to 34/1).

2. Tie yarn—100% filament polyester; 120 metric/48 filaments (75 denier/36 filaments).

3. Fleece yarn—60% combed cotton/40% polyester; 17/1 to 24/1 metric (10/1 to 14/1).

*Gauge:* 20.

*Weight:* 271 to 300 g/m2 (8.0 to 8.85 oz/square yard).

*Width:* 152 to 183 centimeters (60 to 72 inches).

*Finish:* (Piece) dyed; printed.

In addition, the technical back must be heavily napped to produce a fabric thickness of not less than 4.5 millimeters, including the napped pile. Additionally, a portion of the fabric is brushed on the technical face to produce a sueded hand and appearance and a portion is treated with a stain release finish. Finally, the following performance criteria must be satisfied:

—Vertical and horizontal shrinkage must be less than 5%.
—Torque may not exceed 4%.
—All fabrics must have a Class 1 flammability rating.
—For optimum fabric integrity and stitch definition, this fabric must be knit on machines whose number of yarn feeds is a multiple of 3.

(14) Certain raschel knit open work crepe fabric, of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*HTS Subheadings:* 6005.42.00.10 and 6005.44.00.10.

*Fiber Content:* 73% viscose rayon/4% nylon/3% spandex.

*Yarn Number:* (1) 32/2 to 36/2 metric (18.9/2 to 21.2/2 English) spun viscose rayon.

(2) 163.7 to152.4 metric (55 to 59 denier)/10 filament nylon.

(3) 43.3 to 42.9 metric (208 to 210 denier) spandex wrapped around 132 to 125 metric (68 to 72 denier) nylon.

*Machine Gauge:* 18.

*Number of Bars:* 16.

*Weight:* 0.23 kg/m2 (0.659 linear yards/lb), plus or minus 5%.

*Width:* Not less than 137 centimeters (54 inches) cuttable for piece dyed goods; not less than 147.32 centimeters (58 inches) for printed goods.

*Finish:* (Piece) dyed; printed.

**Note:** This fabric has a unique "blistered" face requiring each of the constituent yarns to be fed separately, with small, regular open-work interstices, representing about 15% of the total surface area.

(15) Certain cotton/nylon woven fabric, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheadings:* 5211.31.0020.

*Fiber Content:* 75% cotton/25% nylon.

*Yarn Number:* Warp yarn size: 35.5/1 metric cotton; filling yarn size: 35.5/1 metric (slub yarn of cotton alternating with a 45 metric filament nylon) 41 warp ends/cm; 22 filling picks/cm.

*Weight:* 223 g/m2.

*Width:* 147 centimeters.

*Weave Type:* Plain.

*Finish:* (Piece) dyed.

(Variance allowance of up to three percent for yarn size, thread count, fabric weight, and fabric width for the above fabric.)

(16) Certain polyester/nylon woven corduroy fabric, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5801.32.

*Fiber Content:* 86% polyester/14% nylon.

*Yarn Number:* Warp yarn size: 60 metric filament polyester; filling yarn size: 60 metric filament polyester and a 56 metric filament nylon; 28 warp ends/cm; 63 filling picks/cm.

*Weight:* 250 g/m2.

*Width:* 150 centimeters.

*Weave Type:* Corduroy—3 wales/centimeter.

*Finish:* (Piece) dyed.

(Variance allowance of up to three percent for yarn size, thread count, fabric weight, and fabric width for the above fabric.)

(17) Certain 2-way stretch woven polyester, rayon, spandex fabric, of the specifications detailed below, classified

in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5515.11.00.

*Fiber Content:* 50% to 77% polyester/18% to 47% rayon/3% to 8% spandex (for fabrics comprising single yarns in the warp, the polyester content may be higher).

*Staple Length:* 4.44 to 6.99 centimeters (1.75 to 2.75 inches).

*Yarn Number:* (1) Warp and filling: plied polyester/rayon staple of various yarn sizes, combined with spandex filament of various deniers.

(2) Warp and filling: 34/1 (English 20/1) or finer polyester/rayon staple, combined with spandex filament of various deniers.

(3) Warp: 34/1 (English 20/1) or finer polyester/rayon staple, or plied polyester/rayon staple of various yarn sizes, combined with spandex filament of various deniers.

*Filling:* Singles or plied polyester filament of various yarn sizes, combined with spandex filament of various deniers.

**Note:** The designation "34/1 (English 20/1) or finer" describes a range of yarn specifications for yarn in its greige condition before dyeing and finishing of the yarn (if applicable) and before weaving, dyeing and finishing of the fabric. It is intended as a specification to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing and weaving can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarns appearing in the finished fabric as coarser than 34/1 (English 20/1) provided that the coarser appearance occurs solely as the result of such processes.

*Thread Count:* 23 to 51 warp ends by 16 to 39 filling picks per centimeter (60 to 130 warp ends by 40 to 100 filling picks per inch).

*Weave Type:* Various (including plain and twill).

*Weight:* Fabrics comprising single yarns in the warp, 200 to 290 g/m2 (5.9 to 8.6 oz/square yard).

—Fabrics comprising plied yarns in the warp, 200 to 310 g/m2 (5.9 to 9.1 oz/square yard).

*Width:* 121 to 165 centimeters (English 48 to 65 inches).

*Finish:* Dyed and of yarns of different colors.

(18) Certain herringbone stretch woven fabrics of polyester, rayon and spandex yarns, of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5515.11.0040.

*Fiber Content:* 61% to 67% polyester/30% to 36% rayon/1% to 6% spandex.

*Staple Length (where applicable):* 3.18 to 4.44 centimeters (1.25 to 1.75 inches).

*Yarn Number: Warp:* Plied polyester/rayon staple of any yarn size; filling: plied polyester/rayon staple of any yarn size combined with spandex filament of any denier.

*Thread Count:* 36 to 40 warp ends by 22 to 28 filling picks per centimeter (English 91 to 102 warp ends by 56 to 70 filling picks per inch).

*Weave Type:* Twill.

*Weight:* 225 to 250 g/m2 (English 6 to 7.4 oz/square yard).

*Width:* 144 to 155 centimeters (English 54 to 58 inches).

*Finish:* (Piece) dyed.

(19) Certain 100% cotton woven indigo dyed fabrics (fabric #1), of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*HTS Subheadings:* 5208.39.6090 and 5208.39.8090.

*Fiber Content:* 100% combed cotton.

*Yarn Number:* Metric: 64/2 + 64/2 × 64/2 + 64/2 to 71/2 + 71/2 × 71/2 + 71/2 (English: 38/2 + 38/2 × 38/2 + 38/2 to 42/2 + 42/2 × 42/2 + 42/2).

*Construction:* Woven with a dobby attachment.

*Weight:* 150–166 g/m2 (4.4–4.9 oz/square yard).

*Width:* Metric: 130–144 centimeters (51–57 inches).

*Finish:* (Piece) dyed with synthetic indigo, color index no: 73000.

(20) Certain 100% cotton woven indigo dyed fabrics (fabric #2), of the specifications detailed below, classified in the indicated subheading of the HTS, for use in apparel articles:

*HTS Subheading:* 5208.39.8090.

*Fiber Content:* 100% combed cotton.

*Yarn Number:* Metric: 97/2 × 64/1 to 107/2 × + 71/1 (English: 57/2 × 38/1 to 63/2 × 42/1).

*Construction:* Woven with a dobby attachment.

*Weight:* 124–137 g/m2 (3.7–4.0 oz/square yard).

*Width:* 135–149 centimeters (53–59 inches).

*Finish:* (Piece) dyed with synthetic indigo, color index no: 73000.

(21) Certain 100% cotton woven indigo dyed fabrics (fabric #3), of the specifications detailed below, classified in the indicated subheadings of the HTS, for use in apparel articles:

*HTS Subheadings:* 5208.39.6090 and 5208.39.8090.

*Fiber Content:* 100% combed cotton.

*Yarn Number:* Metric: 64/2 + 64/1 × 64/1 to 71/2 + 71/1 × 71/2 (English: 38/2 + 38/1 × 38/1 to 42/2 + 42/1 × 42/1).

*Construction:* Woven with a dobby attachment.

*Weight:* 135–149 g/m2 (4.0–4.4 oz/square yard).

*Width:* 135–149 centimeters (53–59 inches).

*Finish:* (Piece) dyed with synthetic indigo, color index no: 73000.

CITA is soliciting public comments regarding this request, particularly with respect to whether the fabrics described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than March 10, 2010. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in Room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

**Kim Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 2010–2693 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting of the Minnesota Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 3 p.m. on March 5, 2010, at Embassy Suites, 175 East Tenth St., St. Paul, MN. The purpose of the meeting is to hold a briefing on resources devoted to civil rights enforcement in Minnesota.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 5, 2010. The address is 55 W. Monroe St., Suite 410, Chicago, IL 60603. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Carolyn Allen,

Administrative Assistant at (312) 353–8311 or by e-mail: *callen@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Midwestern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 2, 2010.

**Peter Minarik,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 2010–2608 Filed 2–5–10; 8:45 am]

**BILLING CODE 6335–02–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Government Employment Forms.

*OMB Control Number:* 0607–0452.

*Form Number(s):* E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–9.

*Type of Request:* Extension of a currently approved collection.

*Burden Hours:* 13,985.

*Number of Respondents:* 16,964.

*Average Hours per Response:* 50 minutes.

*Needs and Uses:* This information collection request covers the questionnaires needed to conduct the public employment program for the 2010 and 2011 Annual Survey of Public Employment & Payroll.

The questionnaires for collecting the data are described below. There are eight survey forms used to collect data on government employment, pay, and hours. Since there are many different types and sizes of governments, each form is tailored to the unique characteristics of the type and size of government or government agency to be surveyed.

E–1 State agencies, excluding state colleges and universities

E–2 State colleges and universities

E–3 Dependent agencies of local governments

Single function special district governments

E–4 County governments, Municipal and township governments with populations of 1,000 or more

E–5 Municipalities and Townships (A shortened version of the E–4 form for Municipalities and Townships with a population of < 1,000)

E–6 Elementary and secondary school systems

Local government operated institutions of higher education

E–7 Multifunction dependent agencies and fire protection agencies

Multifunction special district governments

E–9 State police

County Sheriff departments

The type of employment and pay data collected by the public employment program in the 2010 and 2011 Annual Survey of Public Employment & Payroll are identical to data collected in recent annual surveys of government employment. By State, the 2010 and 2011 sample supports estimates of total local government employment and payrolls by type of government and government function.

Statistics compiled from data gathered using these forms are used in several important Federal government programs. Economists at the Bureau of Economic Analysis (BEA) use the statistics in two ways for developing the National Income and Product Accounts. First, the employment data are used in developing price deflators for the government sector components of the gross domestic product accounts. Second, the employment and payroll data are used in developing the government sector components for the national and sub-national personal income accounts and tables.

The regional BEA program uses the Census of Governments and the Annual Survey of Public Employment & Payroll to derive state-level estimates of the employment and wages and salaries of students and their spouses who are employed by public institutions of higher education in which the students are enrolled. There is no other national or state source for information on student workers at state institutions of higher education.

The employment data are used for two other data collection efforts currently conducted by the Census Bureau. The Medical Expenditures Panel Survey (MEPS) collects data for the Department of Health and Human Services (HHS) on health plans offered to state and local government employees. The MEPS sample of public employees is drawn from the Census of Governments—Employment file. The Criminal Justice Employment and Expenditure Survey (CJEE) uses employment data to provide employee and payroll statistics on police protection and correctional activities.

State and local government officials use these data to analyze and assess individual government labor force and wage levels. Both management and labor consult these data during wage and salary negotiations.

Public interest groups of many types produce analyses of public sector activities using these data. User organizations representing state and local government include the Council of State Governments, National Conference of State Legislatures, Government Research Association, U.S. Conference of Mayors, National Association of Counties, National League of Cities, and the International City/County Management Association. A third category of users, having a more specific focus on government activities, includes organizations such as the Citizens Research Council of Michigan and the National Sheriffs Association.

A variety of other organizations and individuals make use of these data. Notable research organizations include the Manhattan Institute for Policy Research, The Brookings Institution, and the Rockefeller Institute of Government. The instructors, researchers, and students in schools of public administration, political science, management, and industrial relations as well as other members of the public also use these data.

*Affected Public:* State, local or Tribal Government.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, Section 161, of the United States Code requires the Secretary of Commerce to conduct a census of governments every fifth year. Title 13, Section 182 of the United States Code allows the Secretary to conduct annual surveys in other years.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington,

DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail *(bharrisk@omb.eop.gov).*

Dated: February 2, 2010.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–2658 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XU06**

### Notice of Intent to Prepare an Environmental Impact Statement on the Effects of Oil and Gas Activities in the Arctic Ocean

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces its intent to prepare an Environmental Impact Statement (EIS) to analyze the environmental impacts of issuing Incidental Take Authorizations (ITAs) pursuant to the Marine Mammal Protection Act (MMPA) to the oil and gas industry for the taking of marine mammals incidental to offshore exploration activities (e.g., seismic surveys and exploratory drilling) in Federal and state waters of the U.S. Chukchi and Beaufort Seas off Alaska.

**DATES:** All comments, written statements, and questions regarding the scoping process and preparation of the EIS must be received no later than April 9, 2010.

**ADDRESSES:** Written comments and statements should be addressed to Mr. P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20190–3225. The mailbox address for providing e-mail comments is *arcticeis.comments@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. Comments and statements may also be submitted via fax to (301) 713–0376. Information on this project can also be found on the Protected Resources webpage at: *http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm*.

**FOR FURTHER INFORMATION CONTACT:** Michael Payne, Office of Protected Resources, NMFS, (301) 713–2289 ext. 110.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 USC 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of proposed authorization is provided to the public for review. The term "take" under the MMPA means "to harass, hunt, capture, kill or collect, or attempt to harass, hunt, capture, kill or collect." Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

#### Summary of Previous National Environmental Policy Act (NEPA) Documents

In 2006, the U.S. Minerals Management Service (MMS) prepared a Programmatic Environmental Assessment (PEA) for the 2006 Arctic Outer Continental Shelf (OCS) seismic surveys. NMFS was a cooperating agency and adopted the Final PEA on June 28, 2006. Under this PEA, NMFS issued Incidental Harassment Authorizations under Section 101(a)(5)(D) of the MMPA to oil and gas companies for the taking of marine mammals incidental to seismic surveys in 2006. This PEA analyzed the effects of four concurrent seismic surveys in the Beaufort Sea and four concurrent seismic surveys in the Chukchi Sea. At that time, NMFS indicated that increased activity and new available science would result in a need to prepare an EIS for future authorizations.

On April 6, 2007, NMFS and MMS published a Notice of Availability for a Draft Programmatic EIS (DPEIS) and a schedule of public hearings (72 FR 17117) to assess the impacts of MMS' issuance of permits and authorizations under the Outer Continental Shelf Lands Act (OCSLA) for the conduct of seismic surveys in the Chukchi and Beaufort Seas off Alaska and NMFS' authorizations under the MMPA to incidentally harass marine mammals while conducting those surveys. The proposed scope and effects of the seismic survey activities analyzed in the DPEIS were based on the best available information at the time. Since then, new information (e.g., scientific study results, changes in projections of level of activity) has become available that alters the scope, range of possible alternatives, and analyses in the DPEIS. Therefore, MMS and NMFS filed a Notice of Withdrawal of the DPEIS on October 28, 2009 (74 FR 55539) and announced our decision to begin a new NEPA process.

#### Objectives of the EIS

This NOI announces NMFS' intent, as lead agency, to prepare a new EIS to analyze the potential effects of both geophysical surveys and exploratory drilling, address cumulative effects over a longer time frame, consider a more reasonable range of alternatives consistent with our statutory mandates, and reanalyze the range of practicable mitigation and monitoring measures for protecting marine mammals and availability of marine mammals for subsistence uses. MMS will be a cooperating agency on this EIS.

Specifically, this EIS would:

(1) Assess the environmental impacts to the physical, biological, cultural, economic, and social resources from deep-penetration, two-dimensional (2D) and three-dimensional (3D) streamer and ocean bottom cable surveys (hereafter referred to as seismic surveys)

and shallow hazard and site clearance surveys;

(2) Assess the environmental impacts to the physical, biological, cultural, economic, and social resources from open water offshore exploratory drilling operations during the open water season in order for the industry to drill priority exploration drill sites on MMS OCS leases in the Chukchi and Beaufort Seas. Also, as part of this EIS, NMFS will analyze the effects of obtaining geotechnical data for pre-feasibility analyses of shallow sub-sea sediments as part of its proposed exploratory drilling operations; and

(3) Assess whether alternatives developed would allow for the implementation of a long-term planning process pursuant to section 101(a)(5)(A) of the MMPA through the development and implementation of regulations that would be in place for 5 year time periods.

For the purposes of complying with NEPA and to achieve greater administrative efficiency in its ITA program, NMFS has determined the need to prepare an EIS that will analyze a range of oil and gas exploratory actions and that will satisfy the requirements of the Council on Environmental Quality's NEPA regulations and the NOAA NEPA administrative order 216–6. The proposed EIS would cover known and reasonably foreseeable projects requiring ITAs in the U.S. Arctic regions for future years, until such time that a revision of the document is necessary. NMFS has determined, based on the following factors, that an EIS would serve a more beneficial use in terms of agency decisionmaking and would allow greater public participation in future decisions related to ITAs for the oil and gas industry:

- NMFS and MMS have received preliminary information from industry that suggests an additional increase in seismic survey applications beyond recent levels;
- NMFS has received applications for exploratory drilling and expects more in the future, the effects of which were not analyzed in the withdrawn DPEIS;
- Understanding that both drilling and seismic activities could be expected to continue in the immediate years, both agencies determined that a longer timeframe needed to be analyzed in order to most effectively and fully evaluate the potential for cumulative impacts; and
- NMFS prepares environmental analyses under NEPA to support the issuance of ITAs under sections 101(a)(5)(A) and (D) of the MMPA. Therefore, this EIS will also be used to support future MMPA authorizations issued by NMFS for seismic and exploratory drilling activities in state and Federal waters in the U.S. Arctic Ocean in the Beaufort and Chukchi Seas.

Finally, the environmental analysis will assist NMFS and MMS in carrying out other statutory responsibilities relating to the agencies' role in authorizing seismic survey and exploratory drilling activities or incidental take of marine mammals (e.g., assessing environmental impacts on listed species under the Endangered Species Act [Section 7 consultation] and effects of the proposed action on essential fish habitat [EFH] under the Magnuson-Stevens Fishery Conservation and Management Act [EFH consultation]).

**Overview of Proposed Activities**

*Seismic Activities*

This EIS would analyze effects of seismic activities during the open water season in the Beaufort and Chukchi Seas. Seismic surveys are conducted to obtain data on geological formations from the sediment near-surface to several thousand meters deep (below the sediment surface). This information enables industry to accurately assess potential hydrocarbon reservoirs, helps to optimally locate exploration and development wells, maximizing extraction and production from a reservoir, and to locate shallow geologic hazards. It also allows MMS to fulfill its statutory responsibilities to ensure safe operations, support environmental impact analyses, protect benthic resources through avoidance measures, and perform other statutory responsibilities.

Seismic surveys are most often characterized by the type of data being collected. Seismic surveys may be described in very general terms by when the surveys occur (pre-lease, post-lease) because the timing can indicate the type of data likely to be collected. Surveys may be described by the acoustic sound source (air gun, water gun, sparker, pinger, etc.) or by the purpose for which the data is being collected (speculative shoot, exclusive shoot, site clearance).

Each seismic vessel may be accompanied by other support vessels for provision re-supply and crew change. In addition, fixed-wing aircraft may be used for marine mammal surveillance over-flights.

*Drilling Activities*

This EIS would also analyze effects of offshore exploratory drilling operations during the open water season in order that oil companies can drill exploration targets on their OCS leases in the Beaufort and Chukchi Seas. Also, as part of this EIS, NMFS would analyze the effects of obtaining geotechnical data for pre-feasibility analyses of shallow sub-sea sediments as part of its proposed exploratory drilling operations by drilling a series of boreholes, each up to 400 feet (122 m) in depth.

Each drilling vessel is typically accompanied by up to two Arctic class ice management vessels which also serve duty as anchor tenders and other drill ship support tasks, as well as additional support vessels, oil spill response vessels, and aircraft. Additional support vessels will be used for provision re-supply and crew change. In addition, fixed-wing aircraft may be used for marine mammal surveillance over-flights, as well as for activities such as crew change and provision re-supply.

**Scoping**

Publication of this notice begins the official scoping period that will help clarify previously identified issues of concern and determine the range and structure of alternatives to be considered in the EIS. NMFS invites comments and input from the public, organizations and interest groups, local governments, and Federal and state agencies on issues surrounding the proposal. The scoping period will end on April 9, 2010; for consideration in the development of the EIS, all written statements and questions must be received by this date, via contact means identified above (see **ADDRESSES**).

NMFS will consider all comments received during the scoping period. All hardcopy submissions must be unbound and suitable for copying and electronic scanning. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. NMFS requests that you include in your comments:

(1) Your name and address;

(2) Whether or not you would like a copy of the Draft EIS; and

(3) Any background documents to support your comments as you feel necessary.

Instructions: All comments received are a part of the public record. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

This notice requests public participation in the scoping process, provides information on how to

participate, and identifies a set of preliminary alternatives to serve as a starting point for discussions. The public will have additional opportunities to comment on the Draft EIS and any applications received under the MMPA as part of this action. In particular, NMFS is soliciting information on:

(1) Effects of oil and gas exploration on marine mammal behavior and use of habitat;

(2) Effects of oil and gas exploration on availability of species for subsistence uses;

(3) Available new science on the Arctic ecosystem; and

(4) Available new technology for monitoring or obtaining seismic/drilling data.

The scoping comments will help inform NMFS' formulation of a range of reasonable alternatives considered in the EIS. The scope and structure of the alternatives evaluated will reflect the combined input from the public, industry, stakeholders, affected state and Federal agencies, and NMFS administrative and research offices. The range of reasonable alternatives that are analyzed in this EIS will be determined based on information gathered during scoping and will be consistent with the purpose and need of NMFS' and MMS' actions and with applicable law.

Issues and concerns associated with oil and gas related activities in the Arctic marine environment have been documented by the scientific community, government publications, at scientific symposia, through the scoping and public hearings/comments, and other NEPA analyses. In addition, public testimony and traditional knowledge from Alaskan Natives have provided valuable information about the potential impacts to marine mammals and on subsistence hunting of such species from seismic surveying and drilling operations. Based on information from these sources, the following prominent issues and concerns on which NMFS is seeking public comments have been identified and will be included in an alternatives framework and analysis of effects:

- Protection of subsistence resources and Inupiat culture and way of life
- Disturbance to bowhead whale migration patterns
- Impacts of seismic operations on marine fish reproduction, growth, and development
- Harassment and potential harm of wildlife, including marine mammals and marine birds, by vessel operations, movements, and noise
- Impacts on water quality
- Changes in the socioeconomic environment
- Impacts to threatened and endangered species
- Impacts to marine mammals, including disturbance and changes in behavior
- Incorporation of traditional knowledge in the decision-making process
- Effectiveness and feasibility of marine mammal monitoring and other mitigation and monitoring measures

To provide a framework for public comments, the range of reasonable alternatives will include the Proposed Action and several other action alternatives, as well as a No Action alternative. The action alternatives analyzed will represent a range of levels of activities from unrestricted to no seismic or exploratory drilling and could address the following, although this list is not exhaustive:

*Levels of Activity*

- Number, scale/size, location, and duration of seismic activities
- Number, scale/size, location, and duration of drilling activities
- Number, scale/size, location, and duration of shallow hazard/site clearance activities
- Number, scale/size, location, and duration of associated support activities (vessel, aircraft, shore)
- The degree to which those activities can overlap in space and time

*Mitigation*

- Exclusion zones based on received levels of sounds;
- Exclusion zones based on presence of specific biological factors in combination with received levels of sound;
- Exclusion zones based on presence and timing of subsistence activities;
- Time/area closures for biological and subsistence reasons; and
- Limitations on certain combinations of activities in specific temporal/spatial circumstances.

The EIS will assess the direct and indirect effects of the alternative approaches to authorizing oil and gas seismic surveys under the OCSLA and the taking of marine mammals incidental to seismic surveys and exploratory drilling activities under the MMPA. The EIS will assess the effects on the marine mammal species and availability of those species for subsistence uses, as well as other components of the marine ecosystem and human environment. The EIS will assess the contribution of these activities to the cumulative effects on these resources, including effects from past, present, and reasonably foreseeable future events and activities in the U.S. Arctic. Anyone having relevant information they believe NMFS should consider in its analysis should provide a description of that information along with complete citations for supporting documents.

For additional information on the withdrawn MMS and NMFS 2007 DPEIS, please visit the MMS website at: *http://www.mms.gov/alaska/ref/EIS%20EA/draft__arctic__peis/draft__peis.htm*.

**Scoping Meetings Agenda**

Public scoping meetings will be held at the following locations in February and March, 2010: Anchorage, Barrow, Kaktovik, Kotzebue, Nuiqsut, Point Hope, Point Lay, and Wainwright. Public scoping meetings will be held at the following dates, times, and locations:

(1) February 18, 2010, 6 – 8 p.m., Northwest Arctic Borough Assembly Chambers, Kotzebue, Alaska;

(2) February 19, 2010, 5 – 7 p.m., Point Hope Community Center, Point Hope, Alaska; and

(3) February 22, 2010, 7 – 9 p.m., Point Lay Community Center, Point Lay, Alaska.

The final dates, times, and locations are not yet finalized for the public scoping meetings in Anchorage, Barrow, Kaktovik, Nuiqsut, and Wainwright; a supplement to this NOI will be published with the final meeting dates, times, and locations. Comments will be accepted at all public scoping meetings, as well as during the scoping period and can be submitted via the methods described earlier in this document (see **ADDRESSES**).

**Special Accommodations**

These meetings are accessible to people with disabilities. Requests for sign language interpretation or auxiliary aids should be directed to Sheyna Wisdom by telephone at (907) 261–6705 or by email at *Sheyna__Wisdom@URSCorp.com* at least 7 days before the scheduled meeting date.

Dated: February 2, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–2681 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XU25**

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Caribbean Fishery Management Council's (CFMC) Scientific and Statistical Committee (SSC) will hold a meeting. The meeting is open to the public, and will be conducted in English.

**DATES:** The SSC meeting will be held on March 2–4, 2010. The SSC will convene on March 2, 3, and 4, 2010, from 9:30 a.m. until 5 p.m.

**ADDRESSES:** The meeting will be held at the Hilton Miami Downtown, 1601 Biscayne Boulevard, Miami, FL 33132

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The SSC will meet to discuss the items contained in the following agenda:

**March 2, 2010**

•Call to order
•Adoption of Agenda
•Proposed Revision of Commercial Data Collection Process
-Presentation by Steve Turner
-Puerto Rico's Data Collection - DNER
-USVI Data Collection - DPNR
-Discussion
•Proposed Revision of Marine Recreational Data Collection Process (Now MRIP)
•Proposed Revision of Highly Migratory Species (HMS) Data Collection Process

**March 3. 2010**

•Call to Order
•Proposed Fishery Independent Data Collection Project
-Presentation by Todd Gedamke
-Discussion
•Information on Density Ratio Control Rules Using Marine Reserves
-Presentation by Alec McCall
-Discussion
•Other Proposed Research/Monitoring Projects

**March 4, 2010**

•Call to Order
•Development of Projects to Recruit Talented Individuals into the Discipline of Stock Assessment in the U.S. Caribbean
-Presentation by Jim Berkson
-Discussion
•Prioritization of Proposed Research and Monitoring Projects
-Discussion
•Creation of Formal Report for CFMC
•Next Meeting

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 3, 2010.

**William D. Chappell,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2010–2639 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Mission Statement

**AGENCY:** Department of Commerce, ITA.

**ACTION:** Notice.

**Mission Statement**

Secretarial Indonesia Clean Energy Business Development Mission May 23–25, 2010.

**Mission Description**

U.S. Secretary of Commerce Gary Locke will lead a senior-level U.S. business development mission to Jakarta, Indonesia May 23–25, 2010 to discuss market development policies and promote U.S. exports in a broad range of clean energy technologies, including the geothermal, biomass, hydropower, wind, solar, and energy efficiency sectors.

The mission will focus on helping U.S. companies already doing business in Indonesia to increase their current level of exports and business interests, as well as, U.S. companies that are experienced exporters enter Indonesia for the first time in support of creating green jobs in the United States. Participating firms will gain market information, make business and government contacts, solidify business strategies, and/or advance specific projects. In each of these important sectors, participating U.S. companies will meet with prescreened partners, agents, distributors, representatives, and licensees. The agenda will also include meetings with high-level national and local government officials, networking opportunities, country briefings, and seminars.

The delegation will be comprised of approximately 10–15 U.S. firms representing a cross-section of U.S. clean energy industries. The mission will also be open to representatives of U.S. trade associations in the targeted industries with commercial interest in Indonesia.

Representatives of the U.S. Trade and Development Agency (USTDA) and the Export-Import Bank of the United States (Ex-Im) will be invited to participate to provide information and counseling on their programs, as they relate to the Indonesian market.

**Commercial Setting**

Indonesia's 47 year legacy as the Organization of the Petroleum Exporting Countries' (OPEC) sole Asian member was eclipsed as the country became a net importer and exited OPEC. Today, liquid natural gas (LNG), thermal coal, and palm oil exports for bio fuel, dominate energy exports. Sound fiscal and monetary policies, strong domestic consumption, and diversified exports have contributed to the overall economic growth of Indonesia, making it one of the world's fastest growing economies in 2009. Energy needs have far exceeded supply causing the country to embark on multiple initiatives to regain energy balance, including a mandate of 15% renewables by 2025, that positions this mission perfectly for the U.S. to emphasize the importance of policy and competitive trade practices to shape the development of this high potential market.

In 2004, Indonesia's government announced a "Crash Program" to produce 20,000 MW of additional energy to support economic growth. Phase I of the program was confined to coal-fired electricity plants primarily

sourced from China. Phase II of the program includes public sector guarantees for "off take" power purchase agreements by the state-owned utility and preferences for renewable energy production sources such as geothermal—a major opportunity for U.S. firms who are competitive in the sector. Beyond the Crash Program, the Indonesian government expects a 56% increase in overall energy investments by 2014. Investment estimates include both public and private funds, which will be targeted at increasing the supply of electricity in urban areas, while also meeting the country's rural electrification needs. As a public service goal, the government of Indonesia intends to provide electricity to 90% of the country by 2010.

Opportunities for clean energy exports from the United States are driven in large part by the Indonesian Government's mandate that by 2025, 15% of the nation's electricity should come from renewable energy sources—5% from geothermal sources, 5% from biomass, and 5% from other renewables. To accomplish this goal, Indonesia will likely need to add 6.7 GW of new renewable energy production by 2025.

Though Indonesia's renewable energy industry offers potential growth, barriers still exist that prevent U.S. companies from accessing the market and competing with domestic firms. The pricing regime for renewable energy, the "Negative Investment List" restricting foreign investment in small power production facilities that produce less than 10 MW, the lack of transparency in the tendering process, and subsidies for fossil fuel production all forestall the development of cleaner energy resources.

Despite the challenges, Indonesia is open to partnering with U.S. clean energy firms and with key U.S. technology and services providers. Indonesia's strategic setting in Asia, and its emerging domestic market and resources offer significant opportunities for the U.S. clean energy industry. Indonesia is home to 40% of the world's known geothermal resources and provides additional opportunities in solar, biomass, "clean coal" technology such as gasification or wet coal enhancement, and energy efficiency technologies.

Today, renewable energy currently accounts for a small, but growing portion of Indonesia's electricity portfolio. Most renewable energy comes from the hydropower and geothermal industries, but growth in other renewable energy industries—particularly biomass—is likely given the country's significant resource potential and its desire to invest in cutting-edge clean energy technologies.

**Mission Goals**

This Business Development Mission to Indonesia will demonstrate the United States commitment to a sustained economic partnership with Indonesia. It will build on recent commercial diplomacy and policy development in Indonesia focused on clean energy, transportation, science and financing. The mission will combine Secretarial level policy dialogue and relationship development with business development for U.S. firms. The mission purpose is to support participants as they construct a firm foundation for future business in Indonesia and specifically aims to:

- Assist in identifying partners and strategies for U.S. companies to provide access to Indonesian markets for clean and efficient technologies that advance Indonesian goals to reduce greenhouse gas emissions.
- Position participant firms as clear and effective voices to promote policies and regulatory frameworks that boost demand for clean energy products/services and assure U.S. access and commercial success.
- Confirm USG support for activities of U.S. business in Indonesia and to provide access to senior government decision makers in the new Indonesian administration.
- Listen to the needs, suggestions and experience of individual participants so as to shape appropriate USG positions regarding Indonesia and U.S. business interests.
- Organize private and focused events with local business and association leaders capable of becoming partners and clients for U.S. firms as they develop their business in Indonesia.
- Assist development of competitive strategies and market access with high level information gathering from private and public-sector leaders.

**Mission Scenario**

During the Clean Energy Business Development Mission to Jakarta, Indonesia the participants will:

- Meet with high-level government officials.
- Meet with prescreened partners, agents, distributors, representatives and licensees.
- Meet with representatives of the Chambers of Commerce, industry and trade associations.
- Attend briefings conducted by Embassy officials on the economic and commercial climates.

Receptions and other business events will be organized to provide mission participants with further opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

**Proposed Mission Timetable**

*Jakarta*

Sunday May 23

- Arrive in Jakarta.
- Economic/Market Briefing by U.S. Government Officials.
- Welcome Dinner.

Monday May 24

- Meetings with Indonesian Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Reception Hosted by U.S. Ambassador.

Tuesday May 25

- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Mission concludes—Depart Jakarta.

**Participation Requirements**

All parties interested in participating in the Indonesia Clean Energy Business Development Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Approximately 10–15 companies will be selected from the applicant pool to participate in the mission.

*Fees and Expenses:* After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $2,800 for large firms and $1,900 for a small or medium-sized enterprise (SME), which includes one principal representative.[1] The fee for each additional firm representative (large firm or SME) is $900. Expenses for travel, lodging, some meals, and

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

incidentals will be the responsibility of each mission participant.

*Conditions for Participation:* An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Office of Business Liaison receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the applications.

Each applicant must also:

- Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In cases where the U.S. content does not exceed fifty percent, especially where the applicant intends to pursue investment and major project opportunities, the following factors, often associated with U.S. ownership, may be considered in determining whether the applicant's participation in the trade mission is in the U.S. national interest:
- U.S. materials and equipment content;
- U.S. labor content;
- Repatriation of profits to the U.S. economy; and/or
- Potential for follow-on business that would benefit the U.S. economy;
- Certify that the export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

**Selection Criteria for Participation**

Selection will be based on the following criteria in decreasing order of importance:

- Demonstrated export experience in Indonesia and/or other foreign markets;
- Suitability of a company's products or services to the Indonesian market and likelihood of a participating company's increased exports to or business interests in Indonesia as a result of this mission;
- Ability of participant to clearly and effectively promote policies and regulatory frameworks that support U.S. access and commercial success;
- Current or pending major project participation; and
- Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, demographics, and traditional under-representation in business, may also be considered during the review process. Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for this mission will begin immediately upon approval. Applications can be completed on-line at the Indonesia Clean Energy Business Development Mission Web site at *http://www.trade.gov/CleanEnergyMission* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *CleanEnergyMission@doc.gov*). The application deadline is Friday, February 26, 2010. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, February 26, 2010 will be considered only if space and scheduling constraints permit.

**Contacts**

The Office of Business Liaison, 1401 Constitution Avenue, NW., Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, E-mail: *CleanEnergyMission@doc.gov*.

**Sean Timmins,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. 2010–2492 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Mission Statement; Secretarial China Clean Energy Business Development Mission; May 16–21, 2010

**AGENCY:** Department of Commerce, ITA.

**ACTION:** Notice.

**Mission Description**

U.S. Secretary of Commerce Gary Locke will lead a senior-level U.S. business development mission to China May 15–21, 2010 to promote U.S. exports in a broad range of leading U.S. technologies related to the following sectors: clean energy, energy efficiency, and electric energy storage and transmission and distribution. The mission will make stops in Beijing, Hong Kong and Shanghai.

The mission will focus on helping U.S. companies already doing business in China to increase their current level of exports and business interests, as well as, U.S. companies that are experienced exporters enter China for the first time in support of creating green jobs in the United States. Participating firms will gain market information, make business and government contacts, solidify business strategies, and/or advance specific projects. In each of these targeted sectors, participating U.S. companies will meet with prescreened local partners, agents, distributors, representatives, and licensees. The agenda will also include meetings with high-level national and local government officials, networking opportunities, country briefings, and seminars.

The delegation will be comprised of approximately 20–25 U.S. firms representing a cross-section of U.S. industries that have developed products, services or technologies to reduce greenhouse gas emissions. The mission will also be open to representatives of U.S. trade associations in the targeted industries with commercial interest in China.

Representatives of the U.S. Trade and Development Agency (USTDA) and the Export-Import Bank of the United States (Ex-Im) will be invited to participate to provide information and counseling on their programs, as they relate to the China market.

**Commercial Setting**

China's rapid economic growth has been accompanied by a large increase in demand for energy and a dramatic jump in greenhouse gas emissions. Other pressing issues include China's limited energy resources and need to increase industrial energy efficiency. In response to these challenges, China's central government has made clean energy and energy efficiency strategic priorities. In the 11th Five-Year Plan, the government has set targets to reduce energy intensity per unit of GDP by 20% as well as reduce emissions for major pollutants, such as sulfur dioxides, nitrogen oxide, and carbon dioxide, by 10%.

The Chinese Government's passage of the new Renewable Energy Law has codified many of these mandates, including a renewable energy portfolio of at least 15 percent by 2020. This law is partly responsible for the increase in new renewable energy projects and offers U.S. producers an important opportunity to provide solar photovoltaics, waste-to-energy, biomass, geothermal, biofuels, and resource mapping technologies. China's solar power production in 2008 reached 1.5 million kilowatts; for solar power production, China currently ranks number one in the world. In 2009, solar energy investment in China reached $1.9 billion.

In addition to renewable energy, China is committed to significantly increasing its nuclear power generating capacity as a means to reduce its reliance on coal-fired power plants for electricity production. Mainland China has 11 nuclear power reactors in commercial operation, 20 are currently under construction, and construction is slated to begin on many more. According to the "China Greentech Report," China's ambitious nuclear program aims to increase its nuclear capacity significantly. The government has revised its previous target for 2020 from 40GW to 75GW, representing a compound annual growth rate of 18%.

As approximately 65 percent of China's total energy consumption and 80 percent of all electricity generation is sourced from China's vast coal reserves, a number of coal-related stimulus measures have been put forward by China's National Development and Reform Commission (NDRC). The first tranche of $34.3 billion of central government stimulus funding was allocated in April 2009, including provisions for increasing coal-fired power production efficiency, advancing emissions reduction strategies, and upgrading the electric grid network. With 80 new coal-fired power plants scheduled for construction, the outlook for U.S. clean coal technology companies and power plant construction and service providers remains very strong.

The Chinese recognize that the industrial energy efficiency sector offers the least costly way to reduce greenhouse gas emissions and will help China achieve its ambitious energy efficiency goals. China's government mandates to reduce pollution provide U.S. firms with the opportunity to supply clean tech solutions.

Driven by increased industrialization and rural electrification, China is also building a new electricity infrastructure driven by increased industrialization and rural electrification China's electricity consumption is forecast to grow at an average of 7 percent per year through 2020. The current grid infrastructure system is unable to support greater electricity movement from western power generation resource bases to eastern electricity consumers. Thus, the electricity network sector, including traditional transmission/distribution systems and smart grid technologies, offers huge market opportunities for U.S. companies engaged in information and communication technology, power production, and renewable energy.

*Beijing:* With a population of more than 16 million, China's capital offers unparalleled access to policy-makers and key government agencies, including the National Development and Reform Commission, the Ministry of Environmental Protection, and the Ministry of Industry and Information Technology. Since China's energy and environmental sectors are regulated by the central government, interaction with officials from these bureaus is often critical to a company's success.

There is also a strong local market for clean energy technologies in Beijing due to its size, its political and economic importance. Thanks to Beijing's status as an autonomous municipality, its municipal government can approve foreign investment projects independently from the central government up to a value of $100 million.

Although Olympics-related investment has contributed to improvements in the city's overall environment, energy consumption and air pollution remain serious problems in Beijing. U.S. companies have considerable opportunities to provide the know-how and technology for Beijing to continue on its path to developing a clean energy market.

*Hong Kong:* While Hong Kong, a Special Administrative Region of the P.R.C., is an integral part of China, it operates as a distinct economic zone, rendering the island city, an especially effective entry point for SMEs seeking to establish a presence in or expand their reach into mainland China and the Asia Pacific region. Distinguished also by a per capita GDP above $30,000, the island enjoys preferential trade and investment channels into and out of China, hosting many of Asia's top trade shows. In addition, Hong Kong has an efficient, transparent legal system based on common law principles that offer rigorous intellectual property rights protection and an open government procurement process. These attributes provide U.S. companies, in particular SMEs, relatively easy access to mainland China through Hong Kong, often more rapidly and with fewer cultural barriers than by heading directly to the mainland.

For the Secretarial Mission, Hong Kong offers the delegation access to reputable business partners engaged in the "Cleaner Production Partnership Program." Under this program, the governments of Hong Kong and neighboring Guangdong Province are jointly subsidizing energy and environmental upgrades to hundreds of industrial plants in the Pearl River Delta region of the mainland, most of which are operated from or owned by persons from Hong Kong. In the field of green building, Hong Kong has introduced mandatory standards and approved over 200 building energy audits, which are expected to drive major sales opportunities. Hong Kong is also home to major property developers and real estate management firms with projects in the mainland. In Hong Kong there are as many LEED accredited professionals and a larger concentration of U.S. architectural firms than in all of mainland China. In power generation, Hong Kong is aggressively pursuing fuel switching and other clean energy solutions, as well as renewable technologies. Given its strong R&D capabilities and talent, Hong Kong provides opportunities for U.S. firms in photovoltaics, lighting, and related fields. The Hong Kong government is promoting electric batteries, vehicles and associated infrastructure.

*Shanghai:* Shanghai is known as the commercial and financial capital of China. With an estimated population of 21 million people, Shanghai is the

second largest municipality (after Chongqing) as well as the largest city in China. After 16 years of double digit growth, Shanghai's economy started to slow substantially in 2008 and early 2009 with the onset of the global economic crisis. However, by the third quarter of 2009, Shanghai's gross domestic product (GDP) growth had recovered somewhat to 7.1%. Shanghai's per capita GDP in 2008 was $10,529, three times the national average. Through November of 2009, total trade for Shanghai reached $247 billion compared to $321 billion for the full year of 2008. With its strategic location at the mouth of the Yangtze River, Shanghai also serves as the country's central transportation hub, offering a developed air, rail, sea, and road transportation infrastructure. Shanghai is China's largest port and is now the world's busiest port in tonnage.

Shanghai faces the same severe energy challenges as many other cities. The city recently launched the multi-billion dollar Shanghai Urban Environment Plan, seeking to address urban planning and environmental needs for the city. The Shanghai Municipal Government's energy strategy has focused on the diversification of energy supplies, increasing energy efficiency, and introducing clean energy technologies into the energy mix. Shanghai's energy demand has grown approximately 6–8% annually; as a result, Shanghai's building codes have been changed to encourage energy efficient technologies and design. More than 80 buildings are certified or applying for LEED certification and Shanghai spends 3% of its GDP on environmental protection.

By 2010, total renewable energy capacity is likely to increase drastically with wind power generation reaching 250–300 MW, solar photo thermal equivalent area at 2.5 million square meters, and photovoltaic power generation at 10 MW. As the host of the Shanghai 2010 World Expo, Shanghai's government has launched a large number of urban infrastructure and city beautification projects in line with the Expo theme "Better City, Better Life", promoting the theme of urban environmental sustainability. Shanghai is also considering a "100,000 Solar Roofs Initiative" to add solar panels to homes and businesses.

**Mission Goals**

This trade mission will demonstrate the United States' commitment to assisting U.S. clean energy companies sell new energy efficient technologies in China, and will help China achieve its goals to reduce overall greenhouse gas emissions. The mission will help U.S. businesses initiate or expand their exports to China by making business-to-business introductions, providing first-hand market access information, and providing access to government decision makers. The mission specifically aims to:

- Assist U.S. companies already doing business in China to increase their business there;
- Facilitate the entrance of U.S. companies that are experienced exporters to the China market for the first time;
- Provide advocacy for U.S. companies interested in participating in major projects;
- Supply information on U.S. Government trade financing and technical assistance programs, through the participation of representatives from USTDA and Ex-Im Bank.

**Mission Scenario**

The Clean Energy Business Development Mission to China will include three stops: Beijing, Hong Kong and Shanghai. In each city, participants will:

- Meet with high-level government officials
- Meet with prescreened partners, agents, distributors, representatives and licensees
- Meet with representatives of the Chambers of Commerce, industry and trade associations
- Attend briefings conducted by Embassy officials on the economic and commercial climates

Receptions and other business events will be organized to provide mission participants with further opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

**Proposed Mission Timetable**

*Hong Kong*

Sunday—May 16

- Arrive in Hong Kong.
- Economic/Market Briefing by U.S. Government Officials.
- Welcome Dinner.

Monday—May 17

- Meetings with Local Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Reception Hosted by the U.S. Consul General.

*Shanghai*

Tuesday—May 18

- Economic/Market Briefing by U.S. Government Officials.
- Reception Hosted by the U.S. Consul General.

Wednesday—May 19

- Meetings with Local Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.

*Beijing*

Thursday—May 20

- Economic/Market Briefing by U.S. Government Officials.
- Meetings with Government Officials at selected Ministries.
- Business Event/Briefing with Local Industry Representatives.
- Reception Hosted by TBD.

Friday—May 21

- Individual Company Appointments.
- Meetings with Senior Chinese Government Officials.
- Mission Ends/Depart TBD.

**Participation Requirements**

All parties interested in participating in the Clean Energy Business Development Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Approximately 20–25 companies will be selected from the applicant pool to participate in the mission.

*Fees and Expenses*

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $10,000 for large firms and $8,500 for a small or medium-sized enterprise (SME), which includes one principal representative.[1] The fee for each additional firm

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

representative (large firm or SME) is $3,300.

Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant.

*Conditions for Participation*

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Office of Business Liaison receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the applications.

Each applicant must also:

- Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In cases where the U.S. content does not exceed fifty percent, especially where the applicant intends to pursue investment and major project opportunities, the following factors, often associated with U.S. ownership, may be considered in determining whether the applicant's participation in the trade mission is in the U.S. national interest:
- U.S. materials and equipment content;
- U.S. labor content;
- Repatriation of profits to the U.S. economy; and/or
- Potential for follow-on business that would benefit the U.S. economy;
- Certify that the export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

*Selection Criteria for Participation*

Selection will be based on the following criteria in decreasing order of importance:

- Demonstrated export experience in China and/or other foreign markets;
- Suitability of a company's products or services to the China market and likelihood of a participating company's increased exports to or business interests in China as a result of this mission;
- Current or pending major project participation; and
- Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, demographics, and traditional under-representation in business, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for this mission will begin immediately upon approval. Applications can be completed on-line at the China Clean Energy Business Development Mission Web site at *http://www.trade.gov/CleanEnergyMission* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *CleanEnergyMission@doc.gov*). The application deadline is Friday, February 26, 2010. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, February 26, 2010 will be considered only if space and scheduling constraints permit.

*Contacts*

The Office of Business Liaison, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, E-mail: *CleanEnergyMission@doc.gov*.

**Sean Timmins,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. 2010–2494 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

## INTERNATIONAL TRADE ADMINISTRATION

**(A–570–956)**

## Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**EFFECTIVE DATE:** February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–4114, respectively.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determination**

On October 6, 2009, the Department of Commerce (the Department) initiated the antidumping duty investigation on certain seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China. See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Initiation of Antidumping Duty Investigation, 74 FR 52744 (October 14, 2009) (Initiation Notice). The notice of initiation stated that, unless postponed, the Department would make its preliminary determination in this antidumping duty investigation no later than 140 days after the date of the initiation.

On January 22, 2009, the Petitioners[1] made a timely request pursuant to 19 CFR 351.205(e) for a 50–day postponement of the preliminary determination in this investigation. The Petitioners requested postponement of the preliminary determination to allow adequate time to analyze the submitted information.

For the reasons identified by the Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing this preliminary determination under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act) by 50 days from February 23, 2010 to April 14, 2010. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) and 777(i)(1) of the Act, and 19 CFR 351.205(f)(1).

Dated: February 1, 2010.

**Carole Showers,**

*Acting Deputy Assistant Secretary for Policy and Negotiations.*

[FR Doc. 2010–2696 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XU00**

### Endangered Species; File No. 14754

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Isaac Wirgin, PhD, New York University School of Medicine, Department of Environmental Medicine, Tuxedo, NY 10987, has applied in due form for a permit to import and take shortnose sturgeon (Acipenser brevirostrum) early life stages (ELS) for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before March 10, 2010.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14754 from the list of available applications. The application and related documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14754.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Jennifer Skidmore, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

A scientific research permit application was submitted by Dr. Isaac Wirgin of the New York University School of Medicine, Department of Environmental Medicine, to conduct research on Atlantic and shortnose sturgeon. Dr. Wirgin is requesting to conduct a study to determine if early life-stages of Atlantic and shortnose sturgeon are sensitive to PCB mixtures such that the effects would impact recruitment success in the environment, such as in the Hudson River. He needs an ESA permit to import and take up to 25,000 fertilized shortnose sturgeon eggs of Saint John River ancestry from Acadian Sturgeon and Caviar Inc., Saint John, NB, Canada. If required, shortnose sturgeon eggs could also be supplemented with embryos of Connecticut River descent obtained from the Conte Lab, USGS, Turner Falls, MA (NMFS Permit 1549–01).

The initial proposed research would take place during two sampling seasons beginning in the spring of 2010 and ending in the spring of 2011. In subsequent years of the permit, studies would take place evaluating toxic effects of other contaminants. The permit would not authorize any takes from the wild, nor would it authorize any release of captive sturgeon into the wild.

Dated: February 2, 2002.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–2682 Filed 2–5–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2010–OS–0013]**

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 9, 2010.

[1] The Petitioners in this investigation are United States Steel Corporation, V&M Star L.P., TMK IPSCO, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Manpower Data Center (DMDC) ATTN: Dr. Timothy Elig, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593, or call at (703) 696–5858.

*Title, Associated Form, and OMB Control Number:* Post-Election Surveys; OMB Control Number 0704–0125.

*Needs and Uses:* The information collection requirement is necessary to meet a requirement of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA of 1986 [42 U.S.C. 1973ff]). UOCAVA requires a report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State-Federal cooperation.

*Title of Survey:* The 2010 Post-Election Voting Survey of Overseas Citizens.

*Affected Public:* Individuals or Households.

*Annual Burden Hours:* 125,000.

*Number of Respondents:* 250,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* One Time.

*Title of Survey:* The 2010 Post-Election Voting Survey of Local Election Officials.

*Affected Public:* State, Local or Tribal Government.

*Annual Burden Hours:* 3,950 hours.

*Number of Respondents:* 7,900.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* One time.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

UOCAVA requires the States to allow Uniformed Services personnel, their family members, and overseas citizens to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal offices. The Act covers members of the Uniformed Services and the merchant marine to include the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service, and their eligible dependents. Federal civilian employees overseas, and overseas U.S. citizens not affiliated with the Federal Government. Federal Voting Assistance Program (FVAP) conducts the post-election survey on a statistically random basis to determine participation rates that are representative of all citizens covered by the Act, measure State-Federal cooperation, and evaluate the effectiveness of the overall absentee voting program. The information collected is used for overall program evaluation, management and improvement, and to compile the congressionally-mandated report to the President and Congress.

Dated: February 1, 2010.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–2665 Filed 2–5–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software (OMB Control Number 0704–0369)

**AGENCY:** Defense Acquisition Regulations System; Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through February 28, 2010. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by April 9, 2010.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0369, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@acq.osd.mil.* Include OMB Control Number 0704–0369 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, at (703) 602–0328. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Washington, Room 3B855, DC 20301–3060.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

*Needs and Uses:* DFARS Subparts 227.71 and 227.72 prescribe the use of

solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract are complete and accurate and satisfy contract requirements.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Number of Respondents:* 55,000.

*Responses per Respondent:* about 9.6.

*Annual Responses:* 526,630.

*Average Burden per Response:* about 2.9 hours.

*Annual Response Burden Hours:* 1,528,040 hours.

*Annual Recordkeeping Burden Hours:* 97,000 hours.

*Total Annual Burden Hours:* 1,625,040 hours.

*Frequency:* On occasion.

**Summary of Information Collection**

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized release or disclosure in accordance with 10 U.S.C. 2320:

252.227–7013, Rights in Technical Data—Noncommercial Items.

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARS clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

252.227–7019, Validation of Asserted Restrictions—Computer Software.

252.227–7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes at private expense. Therefore, the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, requires a contractor or subcontractor to submit a use and non-disclosure agreement when it obtains data from the Government to which the Government has only limited rights.

The provision at DFARS 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2010–2702 Filed 2–5–10; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[OMB Control Number 0704–0286]**

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 205, Publicizing Contract Actions

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2010. DoD proposes that OMB extend its approval to expire three years after the approval date.

**DATES:** DoD will consider all comments received by April 9, 2010.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704–0286, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

○ *E-mail: dfars@acq.osd.mil.* Include OMB Control Number 0704–0286 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

o *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, (703) 602–1302. The information collection requirements addressed in this notice are available electronically on the World Wide Web at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 205, Publicizing Contract Actions, and the associated clause at DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Control Number 0704–0286.

*Needs and Uses:* This information collection requires DoD contractors with

contracts of $1 million or more to provide information to cooperative agreement holders, upon request, regarding employees or offices responsible for entering into subcontracts under DoD contracts. Cooperative agreement holders furnish procurement technical assistance to business entities within specified geographical areas. This policy implements section 2416 of Title 10, United States Code.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 7,700.

*Number of Respondents:* 7,000.

*Responses per Respondent:* 1.

*Annual Responses:* 7,000.

*Average Burden per Response:* 1.1 hour average.

*Frequency:* On occasion.

**Summary of Information Collection**

DFARS Part 205 and the clause at DFARS 252.205–7000 require DoD contractors awarded contracts over $1 million provide to cooperative agreement holders, upon their request, a list of those appropriate employees or offices responsible for entering into subcontracts under DoD contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The contractor need not provide the list to a particular cooperative agreement holder more frequently than once a year.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations Council.*

[FR Doc. 2010–2704 Filed 2–5–10; 8:45 am]

**BILLING CODE 5001–08–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 10, 2010.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 2, 2010.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Office of Elementary and Secondary Education**

*Type of Review:* Revision.

*Title:* Mathematics and Science Partnerships Grant Programs Annual Performance Report.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 600.

Burden Hours: 8,400.

*Abstract:* Sections 2201–2203 of the Elementary and Secondary Education Act describe information to be included in the annual performance report required of the Mathematics and Science Partnerships Grant program. Submission of the annual performance report (APR) via the data collection site has taken place since 2006 and will continue to occur between October 30 and November 30 of each year. If APR data submitted during this timeframe are incomplete or inaccurate and/or if re-submission of data is requested by the State education agencies (SEAs), additional data collection may occur at other times throughout the year. The Government Performance and Results Act (GPRA) report provides national-level achievement data for all: (1) The percentage of MSP teachers who significantly increase their content knowledge, as reflected in project-level pre- and post-assessments; (2) the percentage of students in classrooms of MSP teachers who score at the basic level or above in State assessments of mathematics or science; (3) the percentage of students in classrooms of MSP teachers who score the proficient level or above in State assessments of mathematics or science; (4) the percentage of students in classrooms of MSP teachers who score at the proficient level or above in State assessments of mathematics or science measures. The national-level information includes an average of the percentage of proficient students in SEAs administering annual state performance examinations from the previous year to the current year. All projects are included in the GPRA report, regardless of when the project began implementation of their MSP grant.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4178. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–2683 Filed 2–5–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Full-Service Community Schools

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.215J.

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice of proposed priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Secretary of Education proposes priorities, requirements, definitions, and selection criteria for the Full-Service Community Schools (FSCS) program. The Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2010 and later years. We take this action to focus Federal assistance on supporting collaboration among schools and entities within a community in the provision of comprehensive academic, social, and health services for students, students' family members, and community members. We intend the priorities to support the improvement of student outcomes through their promotion of strong school-community partnerships that support effective resource coordination and service delivery.

**DATES:** We must receive your comments on or before March 10, 2010.

**ADDRESSES:** Address all comments about this notice to Jill Staton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–5970.

If you prefer to send your comments by e-mail, use the following address: *FSCS@ed.gov*. You must include the term "FSCS—Comments on FY 2010 Proposed Priority" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Jill Staton. (202) 401–2091 or by e-mail: *FSCS@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria in room 4W245, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The Fund for the Improvement of Education (FIE), which is authorized by section 5411 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), supports nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and help all children meet challenging academic content and academic achievement standards. The FSCS program, which is funded under FIE, encourages coordination of academic, social, and health services through partnerships between (1) public elementary and secondary schools; (2) the schools' local educational agencies; and (3) community-based organizations, non-profit organizations, and other public or private entities. The purpose of this collaboration is to provide comprehensive academic, social, and health services for students, students' family members, and community members that will result in improved educational outcomes for children.

**Program Authority:** 20 U.S.C. 7243–7243b.

*Proposed Priorities:*

### Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)). With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

The Secretary proposes two priorities for the Full-Service Community Schools program. Proposed Priority 1 is an absolute priority—all applicants would be required to meet this priority in order to receive a grant. Priority 2 is a competitive preference priority under which we would award additional points to an applicant that met the priority. We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to change the designation of any of these priorities to absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the selection criteria.

*Background:*

In order for children to be ready and able to learn, they need academic, social, and health supports. The National Research Council has cited the presence of these supports as important predictors of future adult success.[1] Students' needs are better met when academic, social, and health services are delivered to them in a well-coordinated and collaborative manner.

A full-service community school, as defined in this notice, is a public elementary or secondary school that coordinates with its local educational agency and with community-based organizations, nonprofit organizations, and other public or private entities on the provision of comprehensive academic, social, and health services to students, students' family members, and community members. In addition, a full-service community school fosters community development and promotes parental engagement by bringing together many partners in order to offer a range of supports and opportunities

[1] Committee on Community-Level Programs for Youth (2002). *Community Programs To Promote Youth Development.* Edited by J.S. Eccles and J. Gootman. Washington, DC: National Research Council, Institute of Medicine, and National Academy Press.

for students, students' family members, and community members.

Schools do not operate in total isolation from the communities in which they are located. Such community challenges as poverty, violence, poor physical health, and family instability are also education issues. When schools and community partners collaborate to address these issues and align their resources to achieve common results, children are more likely to succeed academically, socially, and emotionally. Full-service community schools seek to address these challenges by connecting students, students' family members, and community members with available services and opportunities, including with increased-learning-time opportunities that can support high academic achievement.

Additionally, the Department recognizes that in order for students and the members of the communities in which they reside to thrive, their schools must be effective. Effective schools create learning environments that support student academic success. They are characterized by high academic standards; rigorous curricula; high-quality teachers; effective school leadership; well-designed assessments and accountability systems; positive school climates; and strong professional development. It is imperative that we pay close attention to our most educationally disadvantaged, persistently lowest-achieving schools, as defined in this notice. These are the schools that continue to challenge our country's system of public education and fail to adequately educate our Nation's youth. Persistently lowest-achieving schools can be transformed into schools that enable all students to meet high standards when these schools implement school intervention models, as defined in this notice, that are aligned with a well-coordinated system of comprehensive academic, social, and health services. The Department believes that the full-service community school model can create the needed synergy to bolster efforts to transform persistently lowest-achieving schools into schools that enable all students to meet high standards.

*Proposed Absolute Priority:*

This absolute priority would support projects that propose to establish or expand (through collaborative efforts among State and local agencies, community-based organizations, other public and private entities, and parents) full-service community schools, as defined in this notice, offering a range of services. To meet this priority, an applicant must propose a project that is based on scientifically based research—as defined in section 9101(3) of the ESEA—and that establishes or expands a full-service community school as defined in this notice. Each applicant must propose to provide at least three of the following eligible services at each participating full-service community school included in its proposed project:

1. Early childhood education;
2. Remedial education and academic enrichment activities;
3. Programs that promote parental involvement and family literacy activities;
4. Mentoring and other youth development programs;
5. Parenting education and parent leadership programs;
6. Community service and service learning opportunities;
7. Programs that provide assistance to students who have been truant, suspended, or expelled;
8. Job training and career counseling services;
9. Nutrition services;
10. Primary health and dental care;
11. Mental health counseling services; and
12. Adult education, including instruction of adults in English as a second language.

*Proposed Competitive Preference Priority:*

We are proposing the following competitive preference priority for this program:

**Proposed Competitive Preference Priority—Strategies That Support Turning Around Persistently Lowest-Achieving Schools**

We propose to give competitive preference to applications to enable schools that are currently identified as persistently lowest-achieving schools, as defined in this notice, and are currently undergoing or plan to undergo one of three school intervention models, as defined in this notice, to become full-service community schools. Applicants would be required to describe (a) the school intervention model that would be implemented to improve academic outcomes for students; (b) the academic, social, and/or health services that would be provided and why; and (c) how the academic, social and/or health services provided would align with and support the school intervention model implemented.

*Proposed Requirements:*

*Background:*

Children, particularly those living in poverty, need a variety of family and community resources, including intellectual, social, physical, and emotional supports, to have the opportunity to attain academic success. Many children live in communities that lack not only high-performing schools, but also the supports that children need to be ready and able to learn when they start school. School-community partnerships are key strategies for providing resources to these individual students. A variety of organizations can help provide the missing resources for children living in poverty and, therefore, begin to transform struggling schools and communities. These organizations can be public or private, community-based or faith-based, governmental or non-governmental, or a combination thereof, but they must work together with clearly articulated and mutually agreed upon goals, target populations, roles, and desired outcomes. Partnerships between schools and organizations may take many forms; for example, a telecommunications firm might offer internships to high school students to help them make real-world connections to the school's science curriculum or a local police department might provide mentors for troubled youth in order to improve a low school graduation rate. Such partnerships can transform the capacity of schools to serve students' diverse needs and improve their outcomes.

A full-service community school coordinator, as defined in this notice, is often central to the effective facilitation of these partnerships and the delivery of services. The FSCS coordinator serves as the lead advocate for the on-site development of the community school effort. The FSCS coordinator assists school staff, parents, and community members, as defined in this notice, by linking students with the community organizations that offer programs and services that can address students' needs. The FSCS coordinator is essential to ensuring that programs and desired outcomes are fully aligned.

*Proposed Requirements:*

The Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

**Application Requirements**

In order to receive funding, an applicant must include the following in its application:

1. A description of the needs of the students, students' family members, and community members to be served, including information about (a) the magnitude or severity of the problem to be addressed by the project; and (b) the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified

and will be addressed by the proposed project.

2. A list of partner entities that will assist the applicant in coordinating or providing services to promote successful student, family, and community outcomes.

3. A memorandum of understanding between the applicant and all partner entities, describing the role each partner entity will assume.

4. A description of the organizational capacity of the applicant to provide and coordinate eligible services at an FSCS that will support increased student achievement. The description must include the applicant's experience partnering with the target school(s) and other partner entities, examples of how the applicant has responded to challenges working with these partners, and lessons learned from similar work or previous community-school efforts. Applicants must also describe their past experience (a) building relationships and community support to achieve results; and (b) collecting and using data for decision-making and ongoing improvement.

5. A comprehensive plan that includes descriptions of the students, students' family members, and community to be served, including information about the demographic characteristics and needs of the students, students' family members, and community to be served. The plan must also include the estimated total number of individuals to be served, disaggregated by the number of students, students' family members, and community members, as defined in this notice, and the type and frequency of services to be provided to each group.

6. A list and description of the eligible services to be provided or coordinated by the applicant and the partner entities.

7. A description of how the applicant will use data to drive decision-making and measure success. This description must include a description of the applicant's plans to build or expand a longitudinal data system to track academic and community support indicators that will be used to monitor and assess outcomes of the eligible services provided and coordinated by the FSCS project.

8. A description of the role and responsibilities of the full-service community school coordinator.

*Eligibility*

To be eligible for a grant under this competition, an applicant must be a consortium consisting of a local educational agency and one or more community-based organizations, nonprofit organizations, or other public or private entities.

*Cost-Sharing or Matching*

To be eligible for an award, a portion of the services provided by the applicant must be supported through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

*Planning*

Because interagency collaborative efforts are highly complex undertakings, and require extensive planning and communication among partners and key stakeholders, applicants receiving funding under this program may devote funds received during the first year of the project period to comprehensive program planning. Funding received by grantees during the remainder of the project period must be devoted to program implementation.

*Proposed Definitions:*

*Background:*

Several important terms associated with the FSCS program are not defined in sections 5411–5413 and 9101 of the ESEA.

*Proposed Definitions:*

The Secretary proposes the following definitions for this program. We may apply these definitions in any year in which this program is in effect.

*Community member* means an individual who is not a student or a student's family member, as defined elsewhere in this notice, but who lives in the community served by the FSCS grant.

*Full-service community school* means a public elementary or secondary school that coordinates with its local educational agency and community-based organizations, nonprofit organizations, and other public or private entities on the provision of comprehensive academic, social, and health services to students, students' family members, and community members. In addition, a full-service community school fosters community development and promotes parental engagement by bringing together many partners in order to offer a range of supports and opportunities for students, students' family members, and community members.

*Full-service community school coordinator* means an individual who has lead responsibility for on-site development and implementation of the full-service community school effort and who, in that capacity, facilitates partnerships and coordinates service delivery.

*Persistently lowest-achieving school* means, as determined by the State under the School Improvement Grants program (pursuant to the final requirements for the School Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009)—

(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

*School intervention model* means one of the following three specific interventions described in the final requirements for the School Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009 and summarized as follows:

(1) Turnaround model, which includes, among other actions, replacing the principal and rehiring no more than 50 percent of the school's staff, adopting a new governance structure, and implementing an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with a State's academic standards.

(2) Restart model, in which a local educational agency converts the school or closes and reopens it under the management of a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process.

(3) Transformation model, which addresses four specific areas critical to transforming persistently lowest-achieving schools: (i) Replace the principal and take steps to increase teacher and school effectiveness; (ii)

institute comprehensive instructional reforms; (iii) increase learning time and create community-oriented schools; (iv) provide operational flexibility and sustained support.

*Student* means a child enrolled in a public elementary or secondary school served by the FSCS grant.

*Student's family member* means the student's parents/guardians, siblings, and any other related individuals living in the same household as the student and not enrolled in the school served by the FSCS grant.

*Proposed Selection Criteria:*

*Background:*

The first FSCS grant competition was held in FY 2008. Our experience with administering this competition suggests that the selection criteria used in FY 2008 were effective in selecting FSCS projects for funding with the greatest potential for success. We believe the following proposed selection criteria, which are essentially the same as those used in FY 2008, would contribute to our efforts to support successful FSCS sites.

*Proposed Selection Criteria:*

The Secretary proposes the following selection criteria for evaluating an application under the FSCS program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the Project Design.*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project consists of a comprehensive plan that includes a description of—

(i) The project objectives;

(ii) The students, students' family members, and community to be served, including information about the demographic characteristics and needs of the students, students' family members, and other community members and the estimated number of individuals to be served; and

(iii) The eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided or coordinated by the applicant and its partner entities, how those services will meet the needs of students, students' family members, and other community members and the frequency with which those services will be provided to students and students' family members.

(b) *Adequacy of Resources.*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources to be provided by the applicant and consortium partners;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(iii) The extent to which costs are reasonable in relation to the number of persons to be served and services to be provided.

(c) *Quality of the Management Plan.*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project consists of a comprehensive plan that includes a description of planning, coordination, management, and oversight of the eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided at each school to be served, including the role of the school principal, the FSCS coordinator, partner entities, parents, and community members;

(ii) The qualifications, including relevant training and experience, of the FSCS coordinator and other key project personnel including prior performance of the applicant on similar or related efforts; and

(iii) The extent to which the time commitments of the project director, the FSCS coordinator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Quality of Project Services.*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the project services, the Secretary considers the following:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Quality of the Project Evaluation.*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the proposed evaluation—

(i) Sets out methods of evaluation that include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(ii) Will provide timely and valid information on the management, implementation, or efficiency of the project; and

(iii) Will provide guidance on or strategies for replicating or testing the project intervention in multiple settings.

*Factors Applicants May Wish to Consider in Developing an Evaluation Plan:*

The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the project period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

*Final Priority, Requirements, Definitions, and Selection Criteria:*

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register.** We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities,

requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities and one or more of these proposed requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register.**

*Executive Order 12866:* This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2010.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2010–2700 Filed 2–5–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education Indian Education—Demonstration Grants for Indian Children Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

**ACTION:** Correction; Notice inviting applications for new awards for fiscal year (FY) 2010.

**SUMMARY:** On December 3, 2009, we published in the **Federal Register** (74 FR 63398) a notice inviting applications for new awards for FY 2010. The notice specified a deadline date of February 18, 2010 for the submission of applications. Since publication, however, we have learned that the Department's e-Application system will be shut down for a system update from February 10, 2010 through February 15, 2010. Therefore, in order to give applicants adequate time to submit their application packages, we are changing the deadline for the submission of applications to February 25, 2010. With this change in the deadline date, we are also changing the deadline date for intergovernmental review.

The specific changes to be made are as follows:

On page 63398, first column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 25, 2010."

On page 63398, first column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 26, 2010."

On page 63399, second column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 25, 2010."

On page 63399, second column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 26, 2010."

**FOR FURTHER INFORMATION CONTACT:** Lana Shaughnessy, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202–6135. Telephone: (202) 205–2528, or by e-mail: *Lana.Shaughnessy@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2010.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2010–2690 Filed 2–5–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education Indian Education—Professional Development Grants

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.299B.

**ACTION:** Correction; Notice inviting applications for new awards for fiscal year (FY) 2010.

**SUMMARY:** On December 18, 2009, we published in the **Federal Register** (74 FR 67182) a notice inviting applications for new awards for FY 2010 for the Indian Education—Professional Development Grants. The *Intergovernmental Review Deadline* date as published on page 67184 is corrected to April 26, 2010. The specific change to be made is as follows:

On page 67184, second column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 26, 2010."

**FOR FURTHER INFORMATION CONTACT:** Lana Shaughnessy, U.S. Department of Education, Office of Indian Education, 400 Maryland Avenue, SW., Room 3E231, Washington, DC 20202–6135. *Telephone:* (202) 205–2528, or by *e-mail: Lana.Shaughnessy@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 3, 2010.

**Thelma Meléndez de Santa Ana,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2010–2701 Filed 2–5–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP10–49–000]**

### Whiting Oil and Gas Corporation; Notice of Application

February 1, 2010.

Take notice that on January 29, 2010, Whiting Oil and Gas Corporation (Whiting), 1700 Broadway, Suite 2300, Denver, CO 80290, filed with the Commission an application under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon the limited jurisdiction certificate authorizing Whiting to transport natural gas it owns through the Robinson Lake Residue Line in Mountrail County, North Dakota granted in Docket No. CP09–14–000. Whiting states that following abandonment, the Robinson Lake Residue Line will be operated as a gathering line and used to deliver a non-pipeline quality, dense phase, high-Btu gas stream to another non-jurisdictional gathering system for processing downstream, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to Rick A. Ross, Whiting Oil and Gas Corporation, 1700 Broadway, Suite 2300, Denver, CO 80290, at (303) 837–4236, or by facsimile at (303) 390–1630, or by e-mail at *rickr@whiting.com*; or Randall S. Rich, Pierce Atwood LLP, 1875 I Street, Fifth Floor, Washington, DC 20006, at (202) 429–2092, or by facsimile at (202) 429–2093, or by e-mail at *rrich@pierceatwood.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* February 16, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–2625 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 459–292]**

### Union Electric Company dba Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 1, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 459–292.

c. *Date Filed:* November 6, 2009. Supplemented on January 13, 2010.

d. *Applicant:* Union Electric Company dba Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located in Benton, Camden, Miller, and Morgan Counties, Missouri. The proposed action would occur along the west bank of the lower Osage River, just downstream of Bagnell Dam in Miller County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Mark Jordan, Ameren/UE, P.O. Box 780, MC CP–850, Jefferson City, MO 65102, (573) 681–7246.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* March 1, 2010.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp.*

Please include the project number (P–459–292) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee requests approval to lease to Silver Star Development, LLC, 64.53 acres of project lands. Silver Star would manage and maintain the lease area for public access, and would rehabilitate an existing building for use as a restaurant and bait and tackle shop. The lease area would further provide public access to the lower Osage River for recreational activities, and a public campground.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–2627 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

January 29, 2010.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC10–42–000; EC09–30–001.

*Applicants:* Milford Power Company, LLC, CPV Milford, LLC.

*Description:* Application for Order Under Section 203 of the Federal Power Act and Request for Blanket Authorization for Certain Future Transactions, Request for Waivers and Expedited Action of Milford Power Company, LLC and CPV Milford, LLC.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–5048.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Take notice that the* Commission received the following electric rate filings:

*Docket Numbers:* ER10–147–003.

*Applicants:* Great River Energy.

*Description:* Great River Energy submits the compliance filing on Revisions to Formula Rate to provide for incentive rates.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0212.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–168–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits revised amended and restated operating agreement.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–0210.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–308–001.

*Applicants:* Kleen Energy Systems, LLC.

*Description:* Kleen Energy Files Cat. 1–Cat. 2 Letter Per Staff.

*Filed Date:* 01/26/2010.

*Accession Number:* 20100126–5039.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–641–000.

*Applicants:* Northeast Utilities Service Company.

*Description:* Connecticut Light and Power Company *et al* submits a Notice of Termination of the Localized Costs Responsibility Agreement with Dynegy Power Marketing, Inc *et al.*

*Filed Date:* 01/26/2010.

*Accession Number:* 20100126–0212.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–663–000.

*Applicants:* DTE Energy Supply, Inc.

*Description:* DTE Energy Supply, Inc submits a Notice of Succession to inform the Commission of the change in name.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0209.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–664–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits a revised pages to its Open Access Transmission Tariff to implement rate changes for Southwestern Public Service.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0210.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–665–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison submits Twelfth Revised Sheet No. 67 *et al* to FERC Electric Tariff, Second Revised Volume No. 6.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0211.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–666–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits executed interim interconnection service agreements.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0212.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–667–000.

*Applicants:* Oklahoma Gas and Electric Company.

*Description:* Oklahoma Gas and Electric Company submits an Amended and Restated Network Integration Transmission Service Agreement, designated as First Revised Service Agreement 43 effective.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0223.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–668–000.

*Applicants:* Medicine Bow Power Partners, LLC.

*Description:* Medicine Bow Power Partners, LLC submits Notice of Cancellation of its FERC Electric Tariff, Original Volume 1.

*Filed Date:* 01/28/2010.

*Accession Number:* 20100128–0224.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 18, 2010.

*Docket Numbers:* ER10–673–000.

*Applicants:* Consolidated Edison Company of New York.

*Description:* Consolidated Edison Company of New York, Inc submits amendment to Delivery Service Rate Schedule No 96.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–0203.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–674–000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy submits an amendment to the Cost-Based Rate Agreement for full requirements electric service with Kansas Electric Cooperative, Inc.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–0205.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–675–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Company submits revision to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6 to update the Transmission Access Charge Balancing Account Adjustment, effective 4/1/10.

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–0211.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

*Docket Numbers:* ER10–676–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits revised interconnection service agreement among PJM, Fairless Energy, LLC, *et al.*

*Filed Date:* 01/29/2010.

*Accession Number:* 20100129–0204.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–2621 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

January 28, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER00–3251–023; ER01–1147–011; ER01–1919–017; ER01–513–029; ER98–1734–020; ER99–2404–016.

*Applicants:* Exelon Generation Company, LLC; PECO Energy Company; Exelon Energy Company; Exelon Framingham, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC; Commonwealth Edison Company; Exelon New England Power Marketing, LP.

*Description:* Quarterly Report (Q4 2009) pursuant to Order 697–C of Exelon MBR Companies.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–5161.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER06–972–004.

*Applicants:* Thornwood Management Company, LLC.

*Description:* Thornwood Management Co submits revisions to its market-based rate schedule.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0210.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER06–972–005.

*Applicants:* Thornwood Management Company, LLC.

*Description:* Thornwood Management Co, LLC submits the Updated Market Power Analysis.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0211.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–398–001.

*Applicants:* Alcoa Power Generating Inc.

*Description:* Alcoa Power Generating Inc submits Substitute Revised Sheet No 31 to FERC Electric Rate Schedule No 19, the Exchange Agreement with Tennessee Valley Authority.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100128–0203.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–619–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* South Power Pool, Inc submits errata filing to correct the error, and includes a clean and redlined version of the corrected Tariff Page as Exhibits I and II.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100128–0206.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–636–000.

*Applicants:* Centre Lane Trading Ltd.

*Description:* Centre Lane Trading Ltd submits the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0209.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–642–000.

*Applicants:* Algonquin Tinker Gen Co.

*Description:* Algonquin Tinker Gen Co *et al* submits a Notice of Name Change and Succession.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0206.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–643–000.

*Applicants:* Algonquin Northern Maine Gen Co.

*Description:* Algonquin Tinker Gen Co *et al* submits a Notice of Name Change and Succession.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0206.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–644–000.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits amendments to Schedule 12 of the Amended and Restated Operating Agreement.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0207.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–645–000.

*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Co submits the jointly executed Network Customer Owned Transmission Facilities Credit Agreement.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0208.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–646–000.

*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Co submits the Morgan-Pinnacle Peak Participation Agreement.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0205.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–647–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City Utilities Commission of City of Owensboro Kentucky under FERC Rate Schedule 300.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0215.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–648–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Paris under FERC Rate Schedule 301.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0216.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–649–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Bradstown Kentucky under FERC Rate Schedule 302.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0217.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–650–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Nicholasville, Kentucky under FERC Rate Schedule 303.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0218.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–651–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Bardourville, Kentucky under FERC Rate Schedule.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0219.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–652–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Providence, Kentucky under FERC Rate Schedule 305.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0220.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–653–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Madisonville, Kentucky under FERC Rate Schedule 306.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0221.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–654–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Bardwell, Kentucky under FERC Rate Schedule 302.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0222.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–655–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Benham, Kentucky under FERC Rate Schedule 308.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0223.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–656–000.
*Applicants:* Kentucky Utilities Company.
*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Corbin, Kentucky under FERC Rate Schedule 309.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100127–0224.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–657–000.
*Applicants:* Kentucky Utilities Company.
*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Falmouth, Kentucky under FERC Rate Schedule 310.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100127–0225.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–658–000.
*Applicants:* Kentucky Utilities Company.
*Description:* Kentucky Utilities Company submits amendment to a contract between KU and the City of Frankfort City Electric and Water Plant Bored, Kentucky under FERC Rate Schedule 311.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100127–0226.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–659–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff, to be effective 1/28/2010.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100128–0202.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–660–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* California Independent System Operator Corporation submits letter agreement for Bidding of Regulation Ancillary Service by Sano Regulation Center with and AES Energy Storage LLC.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100128–0201.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER10–661–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits executed interconnection service agreement among PJM, Mehoopany Wind Energy LLC, et al.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100128–0204.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

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**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*
[FR Doc. 2010–2622 Filed 2–5–10; 8:45 am]
**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

January 27, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97–870–016.
*Applicants:* Sunoco Power Marketing LLC.
*Description:* Sunoco Power Marketing, LLC submits Second Revised Sheet 1 *et al* to its FERC Electric Tariff, Original Volume 1.
*Filed Date:* 01/27/2010.
*Accession Number:* 20100127–0017.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER00–2885–027; ER07–1356–013; ER07–1112–011; ER07–1113–011; ER07–1116–010; ER07–1358–012; ER07–1118–012; ER01–2765–026; ER09–609–004; ER09–1141–006; ER05–1232–022; ER02–2102–026; ER03–1283–021; ER07–1117–013.
*Applicants:* J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation.
*Description:* JPMorgan Sellers submit Notice of Non-Material Change in Status.
*Filed Date:* 01/22/2010.
*Accession Number:* 20100122–5155.
*Comment Date:* 5 p.m. Eastern Time on Friday, February 12, 2010.

*Docket Numbers:* ER01–3001–025; ER03–647–015.
*Applicants:* New York Independent System Operator, Inc.
*Description:* Motion of New York Independent System Operator, Inc. to Advance the Filing Deadline for Filing Certain Compliance Reports.
*Filed Date:* 01/11/2010.
*Accession Number:* 20100111–5121.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 1, 2010.

*Docket Numbers:* ER04–230–045; ER01–1385–039; ER01–3155–030; EL01–45–038.

*Applicants:* New York Independent System Operator, Inc, Consolidated Edison Company of New York.

*Description:* Twentieth Quarterly Report and Request to Conclude Reporting Obligation by New York Independent System Operator, Inc.

*Filed Date:* 01/15/2010.

*Accession Number:* 20100115–5100.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 5, 2010.

*Docket Numbers:* ER04–879–001.

*Applicants:* Sunoco Power Generation, LLC.

*Description:* Sunoco Power Generation, LLC submits marked tariff sheets and clean tariff sheets that conform to the pro forma tariff provisions of Order 697.

*Filed Date:* 01/27/2010.

*Accession Number:* 20100127–0008.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 17, 2010.

*Docket Numbers:* ER09–1364–002.

*Applicants:* Michigan Power Limited Partnership.

*Description:* Michigan Power Limited Partnership Notice of Market-Based Rate Non-Material Change In Facts.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100125–5173.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–86–002.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits errata to its 1/19/10 compliance filing addressing the directives in the Commission's 12/18/09 Order.

*Filed Date:* 01/21/2010.

*Accession Number:* 20100122–0203.

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 11, 2010.

*Docket Numbers:* ER10–153–001.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Niagara Mohawk Power Corporation submits a revised Site Agreement with Erie Boulevard Hydropower, LP.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100126–0216.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–551–001.

*Applicants:* Hartwell Energy Limited Partnership.

*Description:* Hartwell Energy Limited partnership submits an Amended Notice of Cancellation of Rate Schedule 1.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100126–0214.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–552–001.

*Applicants:* Heard County Power, L.L.C.

*Description:* Heard County Power, LLC submits an Amended Notice of Cancellation of Rate Schedule 1.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100126–0215.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–613–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits executed Large Generator Interconnection Agreement.

*Filed Date:* 01/15/2010.

*Accession Number:* 20100119–0207.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 5, 2010.

*Docket Numbers:* ER10–616–000.

*Applicants:* Florida Power Corporation.

*Description:* Florida Power Corporation submits a cost based power agreement with Reedy Creek Improvement District to be effective 3/16/10.

*Filed Date:* 01/15/2010.

*Accession Number:* 20100119–0220.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 5, 2010.

*Docket Numbers:* ER10–639–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100126–0206.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

*Docket Numbers:* ER10–640–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

*Filed Date:* 01/25/2010.

*Accession Number:* 20100126–0213.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM10–4–003.

*Applicants:* Public Service Company of New Hampshire.

*Description:* Supplemental Information of Public Service Company of New Hampshire.

*Filed Date:* 01/22/2010.

*Accession Number:* 20100122–5035.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010–2623 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL08–32–000]**

### Central Minnesota Municipal Power Agency and Midwest Municipal Transmission Group, Inc.; Notice of Filing

February 1, 2010.

Take notice that on January 25, 2010, Central Minnesota Municipal Power Agency and Midwest Municipal Transmission Group, Inc. (CMMPA/MMTG) filed with the Federal Energy Regulatory Commission an amended Petition for a Declaratory Order concerning formula rates and incentives and request for expedited relief and waivers, requesting the Commission's approval of incentive rates for their investments in the CapX2020 Twin Cities to Brookings County (Brookings) transmission line in South Dakota and Minnesota. The requested incentives are (a) 100 percent of their prudently incurred construction work-in-progress (CWIP) in rate base; (b) recovery of 100 percent of their prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond their control; and (c) use of a hypothetical capital structure of 55 percent equity-45 percent debt, and appropriate waivers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on February 16, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–2626 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF09–11–001]**

### TransCanada Alaska Company LLC; Notice of Request for Approval of Plan for Conducting an Open Season

February 1, 2010

Take notice that on January 29, 2010, pursuant to section 157.38 of the Commission's Regulations governing Open Seasons for Alaska Natural Gas Transportation Projects, TransCanada Alaska Company LLC (TC Alaska) filed a Request for Commission Approval of its Plan for Conducting an Open Season. The proposed Open Season is being held to solicit the submission and execution of binding Precedent Agreements for firm natural gas transportation service and optional firm gas treatment service to be provided by TC Alaska's proposed Alaska Pipeline Project, which is more fully described in the filing.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reading Room in Washington, DC. There is an "eSubscription" link on the Commission's Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Please note that the review of TC Alaska's Open Season Plan is being done as part of the pre-filing phase of TC Alaska's Alaska Pipeline Project. Docket No. PF09–11–001 has been reserved for the Open Season Plan and commenters should use the –001 sub-docket for filings regarding the Open Season Plan. The Commission's Web page for eSubscription allows for subscription only to this specific sub-docket, Docket No. PF09–11–001 or, for those interested in the entire pre-filing process to, "Subscribe to root docket and all existing and new sub-dockets."

TC Canada states that the Alaska Pipeline Project is expected to consist of a FERC-jurisdictional gas treatment plant near Prudhoe Bay, Alaska, which will treat North Slope gas for pipeline transportation, and a FERC-jurisdictional gas transmission pipeline connecting the Point Thomson field in Alaska to the gas treatment plant and, a mainline pipeline from the gas treatment plant to either (1) the Alaska/Canada border for onward delivery to Alberta, Canada; or (2) to Valdez, Alaska for a connection to a third party liquefied natural gas facility.

Pursuant to section 157.38 of the Commission's Regulations, the Commission plans to act on the TC Alaska's Open Season Plan by March 29, 2010. TC Alaska states that if its Open Season Plan is approved by the Commission, its open season will begin on April 30, 2010 and end on July 30, 2010.

Any questions regarding this Request for Approval of TC Alaska's Open Season Plan may be directed to:

Eugene R. Elrod—*eelrod@sidley.com,* Richard D. Klingler—*rklingler@sidley.com,* William A. Williams—*bill.williams@sidley.com,* David J. Lewis—*dlewis@sidley.com,* SIDLEY AUSTIN LLP, 1501 K Street, NW., Washington, DC 20005, 202–736–8000, 202–736–8711 (fax).

James K. Morse—*james.morse@exxonmobil.com,* Alaska Pipeline Project—Law Manager, ExxonMobil Development Company, 16945 Northchase Drive, GP4 442, Houston, Texas 77060, 281–654–3346, 262–314–2923 (fax).

Any person desiring to comment on this filing or file a motion to intervene in this phase of the project must file in accordance with the Rule 212 of Commission's Rules of Practice and Procedure. All comments will be considered by the Commission in determining the appropriate action to be taken. In addition to the filing of comments, the Commission will permit the filing of reply comments pursuant to its authority under Rule 213 of the Commission's Rules of Practice and Procedure. The due dates for motions to intervene, comments and reply comments are listed below.

The Commission strongly urges electronic filings of comments and reply comments in lieu of paper using the

"eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of their comments or reply comments to: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (Label cover letter or first page with case name, TransCanada Alaska Company LLC—Docket No. PF09–11–001).

On January 12, 2010, the FERC Staff held a pre-filing workshop in Anchorage, Alaska on the procedures and process for commenting upon and holding an open season for an Alaska Natural Gas Transportation Project. The FERC Staff intends to repeat that workshop at the Commission offices in Washington, DC on February 11, 2010, and the Commission will issue a separate notice in Docket No. RM05–1–000 to that effect.

*Comment Date:* February 24, 2010.

*Reply Comment Date:* March 9, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–2624 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP10–46–000]**

### Equitrans, L.P.; Notice of Request Under Blanket Authorization

February 1, 2010.

Take notice that on January 25, 2010, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP10–46–000, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) for authority to modify and replace segments of its mainline system at fifty-three locations in Greene County, Pennsylvania; and Doddridge, Harrison, Lewis, Marion, Monongalia, and Wetzel Counties, West Virginia and to make certain modifications to compressor engines at its Pratt Compressor Station in Greene County, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Equitrans proposes to modify and uprate its compressor units at the Pratt Compressor Station and to upgrade and increase the capacity of its upstream facilities that deliver into the Pratt Compressor Station. Equitrans states that the central purpose of this proposal is to meet market demand for an additional 92,000 dekatherms (Dth) per day of firm, off-system delivery capacity through the Pratt Compressor Station into downstream, interstate transmission systems operated by Texas Eastern Transmission LP (Texas Eastern), Dominion Transmission, Inc. (DTI), and Columbia Gas Transmission (Columbia). Equitrans asserts that the proposed upgrade and expansion of the subject facilities will create an additional 77,300 Dth per day of potential firm capacity. Additionally, Equitrans proposes to test, replace and/or modify certain segments of its pipeline system to increase the maximum allowable operating pressure (MAOP) of its Low Pressure West System (LPW System) originating at the West Union Station to 605 pounds per square inch gauge (psig) and the MAOP of the Low Pressure East System (LPE System) originating at the Copley Station to 655 psig. Equitrans states that the modifications to the LPW System will provide an additional 51,200 Dth per day of potential capacity and the modifications to the LPE System will provide an additional 26,100 Dth per day of potential capacity. Equitrans states that the estimated cost of the subject facilities is approximately $9,710,241.

Any questions regarding the application should be directed to Joseph M. Dawley, Counsel, Equitrans, L.P., 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, at (412) 553–7708 or (412) 553–7781 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–2628 Filed 2–5–10; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2009–0388; FRL0–9111–9]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production; EPA ICR Number 1788.09, OMB Control Number 2060–0417

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 10, 2010.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0388, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection

Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0388, which is available for public viewing online at *http://www.regulations.gov*, in-person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* NESHAP for Oil and Natural Gas Production (Renewal).

*ICR Numbers:* EPA ICR Number 1788.09, OMB Control Number 2060–0388.

*ICR Status:* This ICR is schedule to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* NESHAP for Oil and Natural Gas Production (40 CFR part 63, subpart HH) (Renewal), were proposed on February 06, 1998, and promulgated on June 17, 1999, only for major sources. On July 8, 2005, a supplemental proposal was proposed for area sources with the final rule effective date on January 03, 2007. This regulation applies to existing and new facilities that are both major and area sources. A major source of hazardous air pollutants (HAP) is one that has the potential to emit, 10 tons or more of any one hazardous air pollutant or 25 tons or more of total HAP per year; an area source is one with the potential to emit less than this.

Owners and operators of a new and existing area source are subject to the General Provision (40 CFR part 63, subpart A). In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. Semiannual summary reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart HH, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 75 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Oil and natural gas production.

*Estimated Number of Respondents:* 132,527.

*Frequency of Response:* Initially, annually, and semiannually.

*Estimated Total Annual Hour Burden:* 178,974.

*Estimated Total Annual Cost:* $17,243,906, which includes $16,649,703 in labor costs, $23,445 in capital/startup costs, and $570,758 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease in the labor hours in this ICR as compared to the previous one. This ICR combines two ICRs covering major sources and area sources. The new area source standard required initial notification by a large number of respondents. In this ICR, such notifications are not required; therefore the number of labor hours is reduced. It should be noted that this ICR includes a large number of sources that are subject only to the recordkeeping requirements of this regulation and do not report to the agency.

This ICR addresses capital/startup and O&M costs for both major sources, and area sources. Therefore, the capital/startup and O&M costs are higher.

Dated: February 2, 2010.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2010–2663 Filed 2–5–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9111–3]**

### Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold a full board meeting on March 16–17, 2010. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of the meeting is to hear from informed speakers on environmental finance issues, proposed legislation, Agency priorities and to discuss progress with work projects under EFAB's current Strategic Action Agenda.

Environmental Finance topics expected to be discussed include: Financial Assurance Mechanisms (Commercial Insurance & Cost Estimation); Financial Assurance and $CO_2$ Underground Injection Control/ Carbon Capture and Sequestration; Water Loss Reduction; Innovative Financing Tools, and State Revolving Fund Investment Options.

The meeting is open to the public, however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Monday, March 8, 2010.

**DATES:** Full Board Meeting is scheduled for Tuesday, March 16, 2010 from 1:30 p.m.–5 p.m. and Wednesday, March 17, 2010 from 9 a.m.–5 p.m.:

**ADDRESSES:** Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Registration and Information Contact:

To register for this meeting or get further information please contact Sandra Keys, U.S. EPA, at (202) 564–4999 or *keys.sandra@epa.gov*. For information on access or services for individuals with disabilities, please contact Sandra Keys. To request accommodations of a disability, contact Sandra Keys, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 1, 2010.

**Joshua Baylson,**

*Associate Chief Financial Officer.*

[FR Doc. 2010–2664 Filed 2–5–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL –9111–4]**

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Auburn, Indiana Department of Water Pollution Control (Auburn)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to Auburn for the purchase of a Hydroself model HS40 flushing gate system. This is a project-specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. These flushing gates, which are supplied by Gabriel Novac & Associates Inc, are manufactured in Canada, and meet Auburn's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Auburn has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a flushing gate system for Auburn's "Long Term Control Plan Store-Treat Facility Project" that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* December 10, 2009

**FOR FURTHER INFORMATION CONTACT:** Julie Henning, SRF Financial Analyst (312) 886–4882, or Puja Lakhani, Regional Counsel, (312) 353–3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60613.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111–5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to Auburn for the acquisition of a flushing gate system which is manufactured in Canada. The manufacturer is Gabriel Novac & Associates Inc.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Auburn proposes to construct a "Long Term Control Plan Store-Treat Facility Project" at the Auburn Water Pollution Control Facility on Wayne Street in Auburn. The project is part of Auburn's 20- year Long Term Control Plan to reduce combined sewer overflows (CSO's). This project will provide storage volume for excess combined sewer flows in a storage tank during rain events which would have previously discharged to Cedar Creek. After the rain event, the excess sewer flow will be treated at the Water Pollution Control Facility. Proper maintenance of the storage tank will require periodic cleaning, to remove solids that settle at the bottom of the tank. Auburn proposes to use a flushing gate system to remove settled solids from the tank. The flushing gate system holds sewer overflow water in reserve in compartments at the upstream end of the storage tank. This flush water, released by a patented mechanism, gives rise to a high celerity wave that effectively removes all accumulated debris in basins and interceptors over flushway lengths greater than any other available method. The use of sewer

overflow water for this process eliminates the need for freshwater. Auburn researched additional options for cleaning the settled solids from the storage tank, including tipping buckets, and vacuum flushing, and concluded that the flushing gate system is preferable to the other options because it is more cost effective and allows for lower maintenance and more efficiency in operation due the use of stored CSO volume for cleaning.

Auburn has requested a waiver from the Buy American provision for the purchase of a Hydroself model HS40 flushing gate system manufactured in Canada. Auburn stated in their waiver application that they were unable to locate any domestic manufacturers of flushing gate systems.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009'," ("EPA Memorandum") defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design."

EPA's national contractor prepared a technical assessment report dated August 2, 2009 based on the submitted waiver request, identifying two potential domestic suppliers of flushing gates. After being notified of the potential domestic suppliers, Auburn contacted each of them to determine the availability of the manufactured good. The subsequent analysis by Auburn and EPA concluded that neither of the domestic suppliers were able to provide the specified good at the time needed and place needed, and in the proper form or specification as dictated by the project plans and design.

Domestic supplier #1 is currently involved in a lawsuit that could stop the manufacturing and sale of the flushing gate. EPA has determined that, under certain circumstances, litigation creates a sufficient basis to render the specified equipment unavailable from a defendant U.S. manufacturer. Specifically, a U.S. manufacturer's product may be considered unavailable when litigation that may implicate an assistance recipient's legal rights to use—and consequently may subject the assistance recipient to patent infringement liability for using—the manufactured good being considered for a project has proceeded through initial legal processes, or been pending for a sufficient period of time (to make clear that the litigation will not be dismissed as frivolous). EPA reviewed the litigation documentation and concluded that, due to this pending litigation, procuring the flushing gates from domestic supplier #1 would present an unacceptable risk to Auburn, and this impediment thus means that the specified goods are not available from this supplier. Auburn contacted domestic supplier #2, and inquired about their ability to deliver the manufactured good within the project timeline. On September 30, 2009, domestic supplier #2 stated in writing that they could not meet Auburn's timeline requirements for this project, thus establishing that the flushing gates would not be available from domestic supplier #2. EPA's national contractor's technical assessment report from August 2, 2009, did not find any additional domestic suppliers of the specified manufactured good.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring communities such as Auburn to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The State and Tribal Programs Branch has reviewed this waiver request and has determined that the supporting documentation provided by Auburn is sufficient to meet the criteria listed under Section 1605(b) of the ARRA, OMB's regulations at 2 CFR 176.60–176.170, and in the April 28, 2009, EPA Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Auburn's performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Auburn is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of the Hydroself model HS40 flushing gate system using ARRA funds as specified in the community's request of July 14, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

**Authority:** Public Law 111–5, section 1605.

Dated December 10, 2009.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2010–2661 Filed 2–5–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (4 U.S.C. chapter 35). On December 1, 2009 (74 FR 62776), the FDIC solicited public comment for a 60-day period on renewal of its "Qualifications for Failed Bank Acquisitions" information collection (OMB No. 3064–0169), currently approved under OMB emergency clearance procedures. No comments were received. Therefore, the FDIC hereby gives notice of its submission of the information collection to OMB for review under normal clearance procedures.

**DATES:** Comments must be submitted on or before March 10, 2010.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following

methods. All comments should refer to the name of the collection:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie at the address identified above.

**SUPPLEMENTARY INFORMATION:**

**Request To Obtain Full Clearance of the Following Collection of Information Currently Approved on an Emergency Basis**

*Title:* Qualifications for Failed Bank Acquisitions.

*OMB Number:* 3064–0169.

*Estimated Number of Respondents*

*Investor reports on affiliates*—20.

*Maintenance of business books and records*—5.

*Disclosures regarding investors and entities in ownership chain*—20.

*Frequency of Response*

*Investor reports on affiliates*—12.

*Maintenance of business books and records*—4.

*Disclosures regarding investors and entities in ownership chain*—4.

*Affected Public:* Private capital investors seeking to acquire assets and/or liabilities of failed insured depository institutions.

*Estimated Time per Response*

*Investor reports on affiliates*—2 hours.

*Maintenance of business books and records*—2 hours.

*Disclosures regarding investors and entities in ownership chain*—4 hours.

*Total Annual Burden:* 840 hours.

*General Description of Collection:* This collection includes reporting, recordkeeping, and disclosure requirements for private capital investors that propose to acquire, directly or indirectly, the deposit liabilities and or such liabilities and assets from the resolution of a failed insured depository institution or for applicants of deposit insurance in the case of *de novo* charters issued in connection with the resolution of failed insured depository institutions (Investors). The information sought from these Investors will provide greater transparency to the FDIC about their business models, capital structures, management, interaction with related parties, and other interests of Investors involved in the acquisition of deposit liabilities or liabilities and assets from troubled insured depository institutions.

*Request for Comment*

*Comments are invited on:* (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments will become a matter of public record.

Dated at Washington, DC this 2nd day of February, 2010.

Federal Deposit Insurance Corporation.

**Valerie Best,**

*Assistant Executive Secretary.*

[FR Doc. 2010–2576 Filed 2–5–10; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 2010.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Evelyn Rome Tabas*, Narberth, Pennsylvania; to acquire voting shares of Royal Bancshares of Pennsylvania, Inc. Narberth, Pennsylvania, and thereby indirectly acquire voting shares of Royal Asian Bank, Philadelphia, Pennsylvania, and Royal Bank of America, Narberth, Pennsylvania.

**B. Federal Reserve Bank of Kansas City** (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. The Galen L. Curry Marital Trust and Donna M. Curry*, Piqua, Kansas, trustee, to retain control of My Anns Corporation, and thereby indirectly retain control of Piqua State Bank, both in Piqua, Kansas.

Board of Governors of the Federal Reserve System, February 2, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010–2564 Filed 2–5–10; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed—Correction

The Commission hereby gives notice of a correction in the Title of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 201118–002.

*Title:* Lease and Operating Agreement between Philadelphia Regional Port Authority and Penn Warehousing & Distribution, Inc.

*Parties:* Philadelphia Regional Port Authority and Penn Warehousing and Distribution, Inc.

*Filing Party:* Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Ave., NW., 10th Floor; Washington, DC 20036.

*Synopsis:* The amendment defines the lease year, clarifies the dockage fee, allows a credit to the Lessee if dockage fees collected reach a certain level, and makes other miscellaneous changes.

By Order of the Federal Maritime Commission.

Dated: February 3, 2010.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2010–2705 Filed 2–5–10; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** February 10, 2010—10 a.m.

**PLACE:** 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

**STATUS:** The meeting will be in Open Session.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Docket No. 06–01: Worldwide Relocations, Inc.; *et al.,*—Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 CFR 515.3, 515.21, and 520.3—Request for Extension of Time.

2. Docket No. 08–04: *Tienshan, Inc.* v. *Tianjin Hua Feng Transport Agency Co., Ltd*—Request for Extension of Time.

3. FY 2010 Budget Status Update.

4. Petition P1–08—Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication.

**CONTACT PERSON FOR MORE INFORMATION:** Karen V. Gregory, Secretary, (202) 523–5725.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2010–2616 Filed 2–4–10; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–10–0747]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call Maryam I. Daneshvar, the CDC Reports Clearance Officer, at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Longitudinal follow-up of Youth with Attention-Deficit/Hyperactivity Disorder identified in Community Settings: Examining Health Status, Correlates, and Effects associated with treatment for ADHD (OMB #0920–0747, exp. 7/31/2010)—Revision—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

This project will collect data from proxy respondents and youths with and without Attention-Deficit/Hyperactivity Disorder (ADHD). This program addresses the Healthy People 2010 focus area of Mental Health and Mental Disorders, and describes the prevalence, incidence, long-term outcomes, treatment(s), select co-morbid conditions, secondary conditions, and health risk behavior of youth with ADHD relative to youth without ADHD.

The National Center on Birth Defects and Developmental Disabilities at CDC promotes the health of children with developmental disorders. As part of these efforts, two contracts were awarded in FY 2007–2010 to follow up a sample of children originally enrolled in community-based epidemiological research on ADHD among elementary-aged youth, known as the Project to Learn about ADHD in Youth (PLAY Study Collaborative), which informed community-based prevalence, rates of comorbidity, and rates of health risk behaviors among elementary-age youth with and without ADHD as determined by a rigorous case definition developed by the principal investigators and in collaboration with CDC scientists.

The purpose of the longitudinal follow-up program is to study the long-term outcomes and health status for children with ADHD identified and treated in community settings through a systematic follow-up of the subjects who participated in the PLAY Study Collaborative. There is a considerable interest in the long-term outcomes of youth with ADHD as well as the effects of treatment, lack of treatment, and quality of care in average U.S. communities, emphasizing the public health importance of longitudinal research in this area.

Given the lack of detailed information about longitudinal development in children with and without ADHD, there is need to continue assessing the children into older adolescence. This program extends data collection for two additional waves.

Minor changes to the assessment instruments are planned in order to include age appropriate assessment of treatment and health risk behaviors in older adolescents, such as understanding motor vehicle operation and dating behavior.

There are no costs to the respondents other than their time. The total annual burden hours are 765.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Responses per respondent | Avg. burden per response (in hours) |
|---|---|---|---|---|
| Parent | ADHD Communication and Knowledge | 190 | 1 | 10/60 |
| Parent | ADHD Treatment, Cost, and Client Satisfaction Questionnaire | 190 | 1 | 10/60 |
| Parent | ADHD Treatment Questionnaire | 190 | 3 | 7/60 |
| Parent | Brief Impairment Scale | 190 | 1 | 4/60 |
| Parent | Critical School Events (Middle School) | 37 | 2 | 4/60 |
| Parent | Critical School Events (High School) | 153 | 2 | 4/60 |
| Parent | Demographic Survey | 190 | 1 | 5/60 |
| Parent | Health Risk Behavior Survey (Middle School) 11–13 years | 37 | 1 | 18/60 |
| Parent | Health Risk Behavior Survey High School, 14+ years | 153 | 1 | 22/60 |
| Parent | Parent-Child Relationship Inventory | 190 | 1 | 15/60 |
| Parent | Parents' Mental Health Questionnaire | 178 | 1 | 5/60 |
| Parent | Quarterly update form | 190 | 3 | 1/60 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Form name | Number of respondents | Responses per respondent | Avg. burden per response (in hours) |
|---|---|---|---|---|
| Parent | Social Isolation/Support | 178 | 1 | 2/60 |
| Parent | Strengths and Difficulties Questionnaire (SDQ) | 190 | 2 | 3/60 |
| Parent | Vanderbilt Parent Rating Scale | 190 | 2 | 10/60 |
| Child | Brief Sensation Seeking Scale | 190 | 1 | 1/60 |
| Child | Conflict in Adolescent Dating Relationships | 153 | 1 | 10/60 |
| Child | Health Risk Behavior Survey (Middle School) 11–13 years | 37 | 1 | 15/60 |
| Child | Health Risk Behavior Survey (High School) 14+ years | 153 | 1 | 25/60 |
| Child | MARSH—Self Description Questionnaire v I, 7–12 years | 15 | 1 | 5/60 |
| Child | MARSH—Self Description Questionnaire v II, 13–15 years | 90 | 1 | 7/60 |
| Child | MARSH—Self Description Questionnaire v III 16+ years | 85 | 1 | 9/60 |
| Child | Social Inventory (High School) 14+ years | 153 | 1 | 10/60 |
| Child | Olweus Bullying Questionnaire (High School) 14+ years | 153 | 1 | 7/60 |
| Child | Pediatric Quality of Life Child (8–12) | 15 | 1 | 5/60 |
| Child | Pediatric Quality of Life Teen (13+) | 175 | 1 | 5/60 |
| Child | Youth Demographic Survey, 16+ years | 85 | 1 | 5/60 |
| Teacher | Teacher Survey | 949 | 1 | 10/60 |

Dated: February 1, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–2600 Filed 2–5–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0489]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recommendations for Clinical Laboratory Improvement Amendments of 1988 Waiver Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by March 10, 2010.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0598. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Recommendations for Clinical Laboratory Improvement Amendments of 1988 Waiver Applications—21 CFR Section 493 (OMB Control Number 0910–0598)—Extension

Congress passed the Clinical Laboratory Improvements Amendment (CLIA) (Public Law 100–578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place. CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary), before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263a(b)). Laboratories that perform only tests that are "simple" and that have an "insignificant risk of an erroneous result" may obtain a certificate of waiver (42 U.S.C. 263a(c)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are "simple" and have "an insignificant risk of an erroneous result" under CLIA (69 FR 22849, April 27, 2004). This guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application). The guidance recommends that CLIA waiver applications include a description of the features of the device that make it "simple"; a report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanisms and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate the accuracy of the test in the hands of intended operators; and statistical analyses of clinical study results. Only new information collections not already approved are included in the estimate in the following table. Quick reference instructions are a short version of the instructions that are written in simple language and that can be posted.

The total number of reporting and recordkeeping hours is 143,200 hours. FDA bases the burden on an agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests. Based on previous years' experience with CLIA waiver applications, FDA expects 40 manufacturers to submit one CLIA waiver application per year. The time required to prepare and submit a waiver application, including the time needed to assemble supporting data, averages 780 hours per waiver application for a total of 31,200 hours for reporting. Based on previous years experience with CLIA waiver applications, FDA expects that each manufacturer will spend 2,800 hours creating and

maintaining the record for a total of 112,000 hours. The total operating and maintenance cost associated with the waiver application is estimated at $66,200. The cost consists of specimen collection for the clinical study (estimated $23,500); laboratory supplies, reference testing and study oversight (estimated $26,700); shipping and office supplies (estimated $6,000); and educational materials, including quick reference instructions (estimated $10,000). This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485 and the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437.

In the **Federal Register** of October 20, 2009 (74 FR 53750), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency of Response | Total Annual Responses | Hours per Response | Total Hours | Operating and Maintenance Costs |
|---|---|---|---|---|---|---|
| 493.15(a) and (b) | 40 | 1 | 40 | 780 | 31,200 | $50,200 |

[1] There are no capital costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours | Operating and Maintenance Costs |
|---|---|---|---|---|---|---|
| 493.15(a) and (b) | 40 | 1 | 40 | 2,800 | 112,000 | $16,000 |

[1] There are no capital costs associated with this collection of information.

Dated: January 25, 2010.

**David Dorsey,**

*Acting Deputy Commissioner for Policy, Planning and Budget.*

[FR Doc. 2010–2598 Filed 2–5–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Lost People Finder System

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Lost People Finder System; *Type of Information Collection Request:* Extension of currently approved collection [OMB No. 0925–0612, expiration date 07/31/2010], *Form Number:* NA; *Need and Use of Information Collection:* The National Library of Medicine (NLM) proposes the continuation of a voluntary collection of data to assist in the reunification of family members and loved ones who are separated during a disaster. Reunification is important to both the emotional well-being of people injured during a disaster and to their medical care. Family members often provide important health information to care providers who are treating the injured (*e.g.*, providing medical history or information about allergies) and they may provide longer-term care for those released from emergency care. NLM proposes this data collection as part of its mission to develop and coordinate communication technologies to improve the delivery of health services. The data collection is authorized pursuant to sections 301, 307, 465 and 478A of the Public Health Service Act [42 U.S.C. 241, 242l, 286 and 286d]. NLM is a member of the Bethesda Hospitals' Emergency Preparedness Partnership (BHEPP), which was established in 2004 to improve community disaster preparedness and response among hospitals in Bethesda, Maryland that would likely be called upon to absorb mass casualties in a major disaster in the National Capital Region. BHEPP hospitals include the National Naval Medical Center (NNMC), the National Institutes of Health Clinical Center (NIH CC), and Suburban Hospital/Johns Hopkins Medicine. NLM, with its expertise in communications, information management, and medical informatics joined BHEPP to coordinate the R&D program, one element of which is development of a lost person finder to assist in family reunification after a disaster. NLM's Lost People Finder System would collect information, on a voluntary basis, about people who are missing and who are found (recovered) during a disaster. Information on recovered individuals would be gathered voluntarily from medical and relief personnel who either use a specialized application developed by NLM for the iPhone or submit information to NLM by e-mail via computer or cell phone. The iPhone application enables submission of photographs and descriptive information about recovered victims in a structured format, *e.g.*, name (if available), age category, gender, general status (healthy, injured), location. Information about missing persons would be submitted by members of the public who are seeking family members, friends, and other loved ones. An interactive Web-based system offers the public a tool for searching for people who have been found (*e.g.*, recovered by medical staff and other relief workers) and for voluntarily posting information about people who are still missing. In addition, the system would collect information on a regular basis from other publicly available systems for that are used for reunification during a disaster for information (*e.g.*, the Google Person Finder system that was deployed during the 2010 earthquakes in Haiti). In addition, information submitted directly to NLM's Lost People Finder System would be transferred to other systems that are endorsed by U.S. government agencies to ensure that users of such systems can search the complete set of available information for their family members and loved ones and to ensure that use of the NLM system in no way interrupts or distracts from the

operation or use of other person finder systems. NLM would also use the data to evaluate the functioning and utility of the lost person finder and guide future enhancements to the system. *Frequency of Response:* The NLM Lost People Finder would be activated only during disasters or emergencies in which U.S. government agencies are called to contribute to relief efforts. It would operate until cessation of relief efforts. During this period of time, information on found persons would be submitted by first-responders, medical, and other relief personnel on an ad-hoc basis, possibly several times per day. Information about missing persons would be submitted voluntarily by members of the public (*i.e.*, those who are seeking family members friends, and other loved ones) on hoc basis, once or twice during the disaster. *Affected Public:* Individuals or households. *Type of Respondents:* Emergency Care First-Responders, Physicians, and Other Health Care Providers who have found (recovered) people, and family members seeking a missing person. *Estimate of burden:* The annual reporting burden is as follows: The estimated burden consists of the burden to emergency responders (care providers, relief workers) of voluntarily entering data into the system about found people and of family members voluntarily entering data to list a missing person and/or search for possible matches. The burden may vary significantly from one disaster to another, depending upon the number of people affected. Using the 2010 earthquake in Haiti as a model, we estimate that some 500 emergency responders might use the system during the course of the relief effort and that each might submit information on 100 people. Submission of information, especially through the iPhone application, is very fast and is estimated to average not more than 5 minutes per entry. The number of family members entering information about a missing person could be much higher. Based on use of the Google Person Finder system during the Haiti earthquake (which contained information on 50,000 people after two weeks of operation), we estimate that some 50,000 family members might use the system twice during a disaster. Data entry would average no more than 5 minutes. Based on these estimates, the total hour burden is calculated to be 12,000 hours. All use of the system is voluntary. Improved estimates of the burden, in particular the number of respondents and frequency of response, could be provided after the initial use of the system in Haiti.

| Types of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Emergency Care First-Responders, Physicians, Other Health Care Providers | 500 | 100 | 0.08 | 4,000 |
| Family members seeking a missing person | 50,000 | 2 | 0.08 | 8,000 |
| Total | 50,500 | ..... | ..... | 12,000 |

The annualized cost to respondents for each year of the clearance is estimated to be $293,120.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or e-mail your request to *sharlipd@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 2, 2009.

**Betsy L. Humphreys,**

*Deputy Director, National Library of Medicine, National Institutes of Health.*

[FR Doc. 2010–2691 Filed 2–5–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Web Based Training for Pain Management Providers

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The purpose of this notice is to allow 60 days for public comment.

**Proposed Collection**

*Title:* Web Based Training for Pain Management Providers.

*Type of Information Collection Request:* New.

*Need and Use of Information Collection:* This research will evaluate the effectiveness of the Web Based Training for Pain Management Providers, via the Web site PainAndAddictionTreatment.com, to positively impact the knowledge, attitudes, intended behaviors and clinical skills of health care providers in the U.S. who treat pain. The Web Based Training for Pain Management Providers is a new program developed with funding from the National Institute on Drug Abuse. The primary goal is to assess the impact of the training program on knowledge, attitude, intended behavior, and clinical skills. A secondary goal is to assess learner satisfaction with the program. If the

program is a success, there will be a new, proven resource available to health care providers to improve their ability to treat pain and addiction co-occurring in the provider's patients. In order to evaluate the effectives of the program, information will be collected from health care providers before exposure to the web based materials (pre-test), after exposure to the web based materials (post-test), and 4–6 weeks after the program has been completed (follow-up).

*Frequency of Response:* On occasion.

*Affected Public:* Volunteer health care providers who treat patients with pain.

*Type of Respondents:* Physicians, nurse practitioners, and physician assistants.

The annual reporting burden is as follows*:*

*Estimated Number of Respondents:* 80.

*Estimated Number of Responses per Respondent:* 3.

*Average Burden Hours per Response:* 0.75.

*Estimated Total Annual Burden Hours Requested:* 180.

The annualized cost to respondents is estimated at: $11,925. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated annual burden hours requested |
|---|---|---|---|---|
| Physicians | 60 | 3 | 0.75 | 135 |
| Other primary care providers (e.g., nurse practitioners, physician assistants) | 20 | 3 | 0.75 | 45 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Scudder Quandra, Project Officer, NIH/NIDA/CCTN, Room 3105, MSC 9557, 6001 Executive Boulevard, Bethesda, MD 20892–9557 or e-mail your request, including your address to *scudderq@nida.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 25, 2010.

**Mary Affeldt,**

*Executive Officer (OM Director), NIDA.*

[FR Doc. 2010–2694 Filed 2–5–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2006–D–0410] (formerly Docket No. 2006D–0191)**

### Guidance for Industry and Food and Drug Administration; Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials." This guidance summarizes FDA's current thoughts on the appropriate use of Bayesian statistical methods in the design and analysis of medical device clinical trials.

**DATES:** Submit electronic or written comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance document entitled "Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, Bldg. 66, rm. 4617, 10903 New Hampshire Ave., Silver Spring, MD 20993 or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax to CDRH at 301–847–8149. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document. Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Greg Campbell, Center for Devices and Radiological Health, Bldg. 66, rm. 2110, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5750; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

This guidance outlines FDA's current thinking on the use of Bayesian statistical methods in medical device clinical trials. Bayesian statistical methods are currently used in a variety of medical device applications to FDA. This guidance includes a general description of Bayesian methods, discussions on design and analysis of Bayesian medical device clinical trials, the benefits and difficulties with the Bayesian approach, and comparisons with standard (frequentist) statistical methods. Additionally, some ideas on

using Bayesian methods in post-market studies are presented.

The draft version of this document was issued on May 23, 2006, for comment. A public meeting to discuss the document was held on July 27, 2006. FDA received several hundred specific comments on the guidance. There were many comments of a specific technical nature; for example, a set of comments regarding our discussion of prior distributions, the meaning of "non-informative" priors, and how we might evaluate the choice of a prior led us to make some changes and additions to the document. As another example, the central importance of the concept of "exchangeability" was revealed in some of the comments and has recently become more apparent; thus the discussion of exchangeability has been greatly expanded. Many comments of a more regulatory nature (e.g. specific issues regarding implementation of Bayesian methods in a regulatory setting) were also addressed in the revision. To the extent possible, editorial comments regarding the presentation of the statistical or technical issues and/or the writing were addressed.

## II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive "Guidance for the Use of Bayesian Statistics in Medical Device Clinical Trials," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1601 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov* or the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

## IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 15, 2010.

**Jeffrey Shuren,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 2010–2596 Filed 2–5–10; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0592]**

### Guidance for Industry on the Contents of a Complete Submission for the Evaluation of Proprietary Names; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Contents of a Complete Submission for the Evaluation of Proprietary Names" (proprietary names submission guidance). This guidance provides recommendations to industry regarding the submission of a complete package that FDA intends to use to assess the safety of proposed proprietary names for drugs, including biological products, and other factors that, in association with the name, can contribute to medication errors. In addition, FDA intends to use this information in the assessment of promotional aspects of proposed proprietary names.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Carol Holquist, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4416, Silver Spring, MD 20993–0002, 301–796–2360; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled "Contents of a Complete Submission for the Evaluation of Proprietary Names." In performance goals under the September 27, 2007, reauthorization of the Prescription Drug User Fee Act (PDUFA IV), FDA agreed to implement various measures to reduce medication errors

related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Among these measures, FDA agreed to publish guidance on the contents of a complete submission package for a proposed proprietary name for a drug/biological product. FDA also agreed to performance goals for review of proprietary names submitted during the investigational new drug application (IND) phase or with a new drug application (NDA) or biologics license application (BLA); the goals stipulate that a complete submission is required to begin the review clock. (See section IX.A of the goals letter at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm*).

This proprietary names submission guidance is intended to promote prevention of medication errors by assisting industry in the submission of complete product information that will help FDA to evaluate the safety of proposed proprietary drug and biological product names, taking into account other factors that, in association with the name, can contribute to medication errors. In addition, FDA intends to use this information in the assessment of promotional aspects of proposed proprietary names.

This proprietary names submission guidance applies to prescription drug products, including biologics, that are the subject of an IND, NDA, abbreviated new drug application (ANDA), or BLA; and nonprescription drug products that are the subject of an IND, NDA, or ANDA.

The proprietary names submission guidance does not address other performance goals under PDUFA IV, including developing FDA internal policies and procedures to ensure that proprietary name review goals are met; developing guidance on best practices for naming, labeling, and packaging drugs and biologics to reduce medication errors; developing guidance on proprietary name evaluation best practices; and developing and implementing a pilot program for evaluating proposed proprietary names. These performance goals are or will be addressed elsewhere.

In the **Federal Register** of November 24, 2008 (73 FR 71009), FDA announced the availability of a draft guidance for industry entitled "Contents of a Complete Submission for the Evaluation of Proprietary Names" and invited comments. Many comments discussed topics that were beyond the scope of the proprietary names submission guidance, including other performance goals under PDUFA IV that are addressed in other public dockets. These comments concerned the contents of any industry-sponsored reviews and data for submission to FDA under the pilot program described in the FDA concept paper entitled "PDUFA Pilot Project Proprietary Name Review" (concept paper) (73 FR 58604, October 7, 2008). FDA acknowledges that information in the proprietary names submission guidance could be useful to participants in the voluntary pilot program for proprietary name review. However, the proprietary names submission guidance does not describe the information needed by FDA to evaluate proposed proprietary names under the pilot program. Rather, the purpose is limited to informing industry about what information is needed by FDA to evaluate proposed proprietary names within PDUFA IV goal dates under the traditional review process. We welcome submission of comments about the tools and methods FDA uses for its analysis of proposed proprietary names under the pilot program to docket number FDA–2008–N–0281.

After considering comments on the draft guidance, FDA has issued the proprietary names submission guidance. Changes made to the guidance were editorial and primarily clarifying in response to comments. The revisions included: (1) Clarifying that the purpose of this guidance is to provide industry with a complete listing of the information FDA needs to evaluate a proposed proprietary name under the traditional review process; (2) adding the respective PDUFA IV review performance timeframes for complete submissions of a proposed proprietary name submitted during the IND phase or with an NDA, BLA, or supplement; and (3) referencing the concept paper[1] for a complete discussion of the tools and methods used for FDA's safety evaluation that are mentioned in the proprietary names submission guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the contents of a complete submission for the evaluation of proprietary names. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

[1] Available on the Internet at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072229.pdf.*

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 and FDA Form 1571 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 and FDA Form 356h have been approved under OMB control number 0910–0338.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: February 3, 2010.

**David Dorsey,**

*Acting Deputy Commissioner for Policy, Planning and Budget.*

[FR Doc. 2010–2660 Filed 2–5–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Purified Inactivated Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3′-UTR of Dengue Types 1,2,3, and 4

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a an exclusive license to practice the following invention as embodied in the following patent applications:

(1) E–120–2001/0, Whitehead *et al.,* "Development of Mutations Useful for Attenuating Dengue Viruses and Chimeric Dengue Viruses"—European Patent Application Number 02739358.6, filed May 22, 2002; United States Patent Application Number 10/719,547, filed November 21, 2003, now U.S. Patent Number 7,226,602, issued June 5, 2007; Canadian Patent Application Number 2448329, filed May 22, 2002; Australian Patent Application Number 2002312011, filed May 22, 2002, now Australian Patent Number 2002312011, issued August 8, 2007; Brazilian Patent Application Number PI0209943.8, filed May 22, 2002; Indian Patent Application Number 2184/DELNP/2003, filed May 22, 2002, now Indian Patent Number 218306, issued March 31, 2007; Indian Patent Application Number 165/DELNP/2008, filed May 22, 2002; United States Patent Application Number 11/446,050, filed June 2, 2006, now U.S. Patent Number 7,560,118, issued July 14, 2009; Australian Patent Application Number 2008203275, filed May 22, 2002; Indian Patent Application Number 204/DELNP/2005, filed May 22, 2002; and United States Patent Application Number 12/396,376, filed March 2, 2009

(2) E–089–2002/0,1, Whitehead *et al.,* "Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3′-UTR of Dengue Types 1,2,3, and 4, or Antigenic Chimeric Dengue Viruses 1,2,3, and 4"—United States Patent Application Number 10/970,640, filed October 21, 2004, now United States Patent Number 7,517,531, issued April 14, 2009; Canadian Patent Application Number 2483653, filed April 25, 2003; European Patent Application Number 03724319.3, filed April 25, 2003; Japanese Patent Application Number 2004–50077, filed April 25, 2003; Indian Patent Application Number 3450/DELNP/2004, filed April 25, 2003, now Indian Patent Number 3450/DELNP, issued May 29, 2006; Australian Patent Application 2003231185, filed April 25, 2003, now Australian Patent Number 2003231185, issued January 10, 2008; United States Patent Application Number 12/398,043, filed March 4, 2009; and Brazilian Patent Application PI0309631–9, filed April 25, 2003

(3) E–139–2006/0, Whitehead *et al.,* "Development of Dengue Vaccine Components"—Australian Patent Application 2007285929, filed August 15, 2007; Canadian Patent Application Number 2661296, filed August 15, 2007; Chinese Patent Application Number 200780031489.4, filed August 15, 2007; European Patent Application Number 07840969.5, filed August 15, 2007; Indian Patent Application Number 1608/DELNP/2009, filed August 15, 2007; United States Patent Application Number 12/376,756, filed February 6, 2009; and Brazilian Patent Application TBA, filed August 15, 2007 to GlaxoSmithKline Biologicals, having a place of business in Rixensart, Belgium. The patent rights in this invention have been assigned to the United States of America.

**DATES:** Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before March 10, 2010 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *ps193c@nih.gov;* Telephone: (301) 435–4646; Facsimile: (301) 402–0220.

**SUPPLEMENTARY INFORMATION:** The global prevalence of dengue has grown dramatically in recent decades. The disease is now endemic in more than 100 countries in Africa, North and South America, the Eastern Mediterranean, Southeast Asia and the Western Pacific. Southeast Asia and the Western Pacific are most seriously affected. Before 1970 only nine countries had experienced Dengue Hemorrhagic Fever (DHF) epidemics, a number that had increased more than four-fold by 1995. WHO currently estimates there may be 50 million cases of dengue infection worldwide every year.

The methods and compositions of this invention provide a means for prevention of dengue infection and dengue hemorrhagic fever (DHF) by immunization with attenuated, immunogenic viral vaccines against dengue. The vaccine is further described in Blaney JE *et al.,* "Mutations which enhance the replication of dengue virus type 4 and an antigenic chimeric dengue virus type 2/4 vaccine candidate in Vero cells." Vaccine. 2003 Oct 1;21(27–30):4317–27 and Whitehead SS *et al.,* "A live, attenuated dengue virus type 1 vaccine candidate with a 30-nucleotide deletion in the 3′ untranslated region is highly attenuated and immunogenic in monkeys." *J. Virol.* 2003 Jan;77(2):1653–7.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to purified inactivated vaccines against dengue infections in humans.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 28, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–2697 Filed 2–5–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–129, Revision of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form I–129, Petition for Nonimmigrant Worker; OMB Control Number 1615–0009.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 9, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated

response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0009 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract: Primary: Businesses.* This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, and training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 364,048 responses at 2.75 hours per response; and 18,500 (Religious Workers) at 3 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,056,632 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: February 3, 2010.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2010–2662 Filed 2–5–10; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2009–0001]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0017; Public Assistance Program

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0017; Public Assistance Program; FEMA Form 90–49, Request for Public Assistance; FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, Project Worksheet—Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, Project Worksheet—Cost Estimate Continuation Sheet; FEMA Form 90–91C Project Worksheet—Maps and Sketches Sheet; FEMA Form 90–91D, Project Worksheet—Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary Record; FEMA Form 90–124, Materials Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; and FEMA Form 90–128, Applicant's Benefits Calculation Worksheet.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before March 10, 2010.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Collection of Information**

*Title:* Public Assistance Program.

*Type of information collection:* Revision of a currently approved information collection.

*OMB Number:* 1660–0017.

*Form Titles and Numbers:* FEMA Form 90–49, Request for Public Assistance; FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, Project Worksheet—Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, Project Worksheet—Cost Estimate Continuation Sheet; FEMA Form 90–91C Project Worksheet—Maps and Sketches Sheet; FEMA Form 90–91D, Project Worksheet—Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary Record; FEMA Form 90–124, Materials Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; and FEMA Form 90–128,

Applicant's Benefits Calculation Worksheet.

*Abstract:* The information collected is utilized by FEMA to make determinations for Public Assistance payments based on the information supplied by the respondents. The following listing provides the instances of information sharing and how the individual collection instruments provide necessary information for Public Assistance considerations. FEMA Form 90–49 identifies the applicant and initiates the request. FEMA Forms 90–91A, B, C and D identifies the scope of the work and cost estimates. FEMA Form 90–120 records factors that could affect the scope of the work. FEMA Form 90–121 is used to determine private non-profit applicant eligibility. FEMA Form 90–123 identifies employees from the applicant's own workforce who perform related work, and FEMA form 90–124 identifies materials of the applicant used on the project. FEMA Form 90–125 provides a list of materials rented for the project, FEMA Form 90–126 identifies contract costs for the project, FEMA Form 90–127 records the applicant's equipment costs and FEMA Form 90–128 provides the applicant's benefit costs for the project. The request for appeals, both first and second, and well as the arbitration requests allow for the applicant to request a review of determinations made.

*Affected Public:* State, Local or Tribal Government.

*Estimated Number of Respondents:* 56.

*Frequency of Response:* On Occasion.

*Estimated Average Hour Burden per Respondent:* 2,992 Hours.

*Estimated Total Annual Burden Hours:* 167,554.

*Estimated Cost:* There are no operation, maintenance, capital or start-up costs associated with this collection.

Dated: January 28, 2010.

**Larry Gray,**

*Director, Office of Records Management, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2010–2619 Filed 2–5–10; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[Docket No. USCBP–2010–0001]**

### Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on February 25, 2010 in Miami, Florida. The meeting will be open to the public.

**DATES:** COAC will meet Thursday, February 25, 2010 from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee completes its business. If you plan on attending, please register either online at *http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/,* or by e-mail to *tradeevents@dhs.gov* by close-of-business on Friday, February 19, 2010.

**ADDRESSES:** The meeting will be held at the Embassy Suites Hotel Miami Airport in the Coconut Grove/Havana Room, 3974 NW South River Drive, Miami, Florida. The public is invited to submit comments and/or written material on any of the identified agenda items as set forth below. Please note that any comments or written materials that are mailed should reach the contact person at the address listed below before February 19, 2010, so that copies of your submitted materials can be distributed to committee members prior to the meeting. Comments must be identified by USCBP–2010–0001 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: tradeevents@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

*Instructions:* All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by COAC, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202–344–1440; facsimile 202–325–4290.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. § App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The fourth meeting of the eleventh term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

**Tentative Agenda**

1. C–TPAT (Customs-Trade Partnership Against Terrorism) Briefing
2. Importer Security Filing ("10+2")
3. Intellectual Property Rights Enforcement Subcommittee
4. Agriculture Subcommittee
5. Air Cargo Security Subcommittee
6. Automation Subcommittee
7. ACE/ITDS (Automated Commercial Environment/International Trade Data System) Briefing
8. Bond Subcommittee/Bond Centralization Update
9. Trade Facilitation Subcommittee

**Procedural**

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors must check-in at the Embassy Suites Hotel at the Coconut Grove/Havana Room with CBP officials at the registration desk.

Since seating is limited, all persons attending this meeting should provide notice by close-of-business on Friday, February 19, 2010, by registering online

at *http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/* or, alternatively, by contacting Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202–344–1440; facsimile 202–325–4290.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: February 3, 2010.

**Kimberly Marsho,**

*Director, Office of Trade Relations, U.S. Customs and Border Protection.*

[FR Doc. 2010–2652 Filed 2–5–10; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2010–0032]**

### Houston/Galveston Navigation Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** The Houston/Galveston Navigation Safety Advisory Committee (“HOGANSAC” or “the Committee”) and its working groups will meet in Houston, Texas to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

**DATES:** The Committee will meet on Thursday, March 11, 2010 from 9 a.m. to 12 p.m. The Committee’s working groups will meet on Thursday, February 25, 2010 from 9 a.m. to 12 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 4, 2010. Requests to have a copy of your materials distributed to each member of the committee or working group should reach the Coast Guard on or before February 24, 2010. All comments and related material submitted after the meeting must be received by the Coast Guard on or before April 11, 2010.

**ADDRESSES:** The Committee and working groups will meet at Western Gulf Maritime Association (WGMA), 1717 East Loop, Suite 200, Houston, Texas 77029, (713) 678–7655. Send written material and requests to make oral presentations to Commander Michael Zidik, Designated Federal Officer (DFO) of HOGANSAC, CG SEC Houston-Galveston, 9640 Clinton Drive, Houston, TX 77029. This notice and documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed in our online docket, USCG–2010–0032, at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning the meeting, please call or e-mail Lieutenant Junior Grade Margaret Brown, Waterways Management Branch, Coast Guard; telephone 713–678–9001, e-mail *Margaret.A.Brown@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

**Agendas of the Meetings**

*Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC).* The tentative agenda is as follows:

(1) Opening Remarks by the Committee Sponsor (RADM Landry) and Chairperson (Ms. Tava Foret).

(2) Approval of May 19, 2009 minutes.

(3) Old Business.

(a) Navigation Operations (NAVOPS)/Maritime Incident Review subcommittee report;

(b) Dredging subcommittee report;

(c) Technology subcommittee report;

(d) Waterways Optimization subcommittee report;

(e) Commercial Recovery Contingency (CRC) Subcommittee replacement needed (vote required by group).

(f) HOGANSAC Outreach subcommittee report;

(g) Area Maritime Security Committee (AMSC) Liaison’s report.

(4) New Business.

(a) Towing Vessel Bridging Program Explanation.

(b) State of the Waterways Address.

(5) Announcements.

(a) PAWSA Completion and VTSA Change Request.

(b) Schedule Next Meetings.

*Working Groups Meeting.* The tentative agenda for the working groups meeting is as follows:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at full committee meeting.

**Procedural**

Both meetings are open to the public. Please note that meetings may close early if all business is finished. At the Chairs’ discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at the Committee meeting, please notify the DFO no later than March 4, 2010. Written material for distribution at a meeting should reach the Coast Guard no later than February 24, 2010. If you would like a copy of your material distributed to each member of the Committee in advance of the meetings, please submit 19 copies to the Coast Guard no later than February 24, 2010.

**Information on Service for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Margaret Brown at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: January 23, 2010.

**M.E. Woodring,**

*Captain, U.S. Coast Guard Commander, Sector Houston-Galveston.*

[FR Doc. 2010–2618 Filed 2–5–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Agency Information Collection Activity

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (the U.S. Geological Survey) have sent an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR which is summarized below describes the nature of this collection and the estimate burden and cost. We may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** You must submit comments on or before March 10, 2010.

**ADDRESSES:** Send your comments and suggestions on this information

collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–0090 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** William C. Burton at (703) 648–6904 or by mail at U.S. Geological Survey, 926A National Center, Sunrise Valley Drive, Reston, VA 20192.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

During FY10, the Volcano Hazards Program (VHP) will provide funding under the American Recovery and Reinvestment Act (ARRA) for improvement of the volcano and other monitoring systems and other monitoring-related activities that contribute to mitigation of volcano hazards. This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding under the VHP. We will accept proposals from State geological surveys and academic institutions requesting funds to assist in the monitoring of active volcanoes and to conduct volcano-related research. Financial assistance will be awarded on a competitive basis following the evaluation and ranking of State and academic proposals. VHP proposals will be reviewed by a peer panel of six (6) members. Five members will be Department of the Interior representatives and one member will be an external representative. To submit a proposal, you must follow the written guideline (that will be made available at *http://www.Grants.gov*) and complete a project narrative. The application must be submitted via Grants.gov. Grant recipients must complete a final technical report at the end of the project period. Narrative and report guidance is available through *http://volcanoes.usgs.gov/* and at *http://www.Grants.gov.*

**II. Data**

*OMB Control Number:* 1028–0090.

*Title:* Volcano Hazards Program (VHP).

*Type of Request:* Extension of a currently approved information collection.

*Respondent Obligation:* Required to obtain or retain benefits.

*Frequency of Collection:* On occasion.

*Description of Respondents:* State Geological Surveys and academic institutions.

*Estimated Number of Annual Responses:* 20 applications and 12 final reports.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 796 hours. We expect to receive approximately 20 applications. It will take each applicant approximately 35 hours to complete the narrative and present supporting documents. This includes the time for project conception and development, proposal writing, and reviewing and submitting the proposal application through Grants.gov (totaling 700 burden hours). We anticipate awarding 12 grants per year. The award recipients must submit a final report at the end of the project. We estimate that it will take approximately 8 hours to complete the requirement for that report (totaling 96 hours).

*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* There are no "non-hour cost" burdens associated with this collection of information.

**III. Request for Comments**

On November 16, 2009, we published a **Federal Register** notice (74 FR 58973) announcing that we would submit this information to OMB for approval. We solicited comments for a period of 60 days, ending on January 15, 2010. We did not receive any comments concerning that **Federal Register** notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 26, 2010.

**Suzette Kimball,**

*Associate Director for Geology, U.S. Geological Survey.*

[FR Doc. 2010–2647 Filed 2–5–10; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R9-WSR-2010-N029] [91400-5420-Survey-7B and 91400-9782-Survey-7B]**

### Proposed Information Collection; OMB Control Number 1018-0088; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by April 9, 2010.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information collected for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR) assists Federal and State agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2011 FHWAR will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in uses of those resources, and a basis for

developing and evaluating programs and projects to meet existing and future needs.

We collect the information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777M), commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i), commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, we provide approximately $800 million in grants annually to States for projects that support sport fish and wildlife management and restoration, including:

- Improvement of fish and wildlife habitats,
- Fishing and boating access,
- Fish stocking, and
- Hunting and fishing opportunities.

We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation.

We conduct the survey about every 5 years. The 2011 FHWAR will be the 12th conducted since 1955. We sponsor the survey at the States' request, which is made through the Association of Fish and Wildlife Agencies. The Census Bureau collects the information using computer-assisted telephone or in-person interviews. The Census Bureau will select a sample of sportspersons and wildlife watchers from a household screen and conduct three detailed interviews during the survey year. The survey collects information on the number of days of participation, species of animals sought, and expenditures for trips and equipment. Information on the characteristics of participants includes age, income, sex, education, race, and residency.

Federal and State agencies use information from the survey to make policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information help identify present and future needs and demands. Land managing agencies use the data on expenditures, economic evaluation, and participation to assess the value of wildlife-related recreational uses of natural resources. States use expenditure information to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues for fish and wildlife restoration programs. The information collected on resident saltwater fishing helps coastal States determine the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the 2011 FHWAR data were not available, it would impair the ability of those States to meet their obligations under the Act.

## II. Data

*OMB Control Number:* 1018-0088.

*Title:* National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

*Service Form Number(s):* None.

*Type of Request:* Reinstatement with change of a previously approved information collection.

*Affected Public:* Individuals.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Household screen interviews and the first detailed sportsperson and wildlife-watcher interviews will be conducted April-June 2011. The second detailed interviews will be conducted September-October 2011. The third and last detailed interviews will be conducted January-March 2012.

*Number of Respondents:* 55,625. The estimated number of respondents reached from a sample of households will be 44,500. About 50 percent, or 22,250, of those respondents will sample in and receive a detailed interview. An additional 50 percent of those households where one person is sampled (11,125) will have a second person screened in for interviews. We estimate the total number of respondents to be 55,625 (44,500+11,125).

| Activity | Number of household responses | Number of participant responses | Completion time per response | Annual burden hours |
|---|---|---|---|---|
| Screen | 44,500 | | 7 minutes | 5,192 |
| Hunting and Fishing - 1st Interview | | 7,300 | 14 minutes | 1,703 |
| Hunting and Fishing - 2d interview | | 14,500 | 10 minutes | 2,417 |
| Hunting and Fishing - 3d Interview | | 21,800 | 15 minutes | 5,450 |
| Wildlife Watching - 1st Interview | | 3,600 | 11 minutes | 660 |
| Wildlife Watching - 2d Interview | | 7,300 | 11 minutes | 1,338 |
| Wildlife Watching - 3d Interview | | 10,900 | 11 minutes | 1,998 |
| Totals | 44,500 | 65,400 | | 18,758 |

## III. Request for Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 2, 2010

**Hope Grey,**

*Information Collection Clearance Officer, Fish and Wildlife Service.*

FR Doc. 2010–2603 Filed 2–5–10; 8:45 am

**Billing Code 4310–55–S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of Draft Director's Order Concerning National Park Service (NPS) Policies and Procedures for Recovering Costs Associated With Providing Utility Services to Non-NPS Users

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Modification to notice of availability (re-opening of public comment period).

**SUMMARY:** The National Park Service is proposing to adopt a Director's Order setting forth the policies and procedures under which the NPS will recover expenses for providing utilities to non-NPS entities. These expenses include, but are not limited to, annual operating costs, cyclical repair and rehabilitation costs, and capital investment cost. 16 U.S.C. lb(4) provides authority for the NPS to furnish "on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System". The Director's Order provides policies and procedures for consistent application of this guidance throughout the National Park Service.

**DATES:** In recognition of obstacles imposed by the presence of two major holidays within the original public comment period, and to ensure full participation by all concerned entities, the period for acceptance of written comments has been re-opened. Comments will be accepted until March 6, 2010. All comments submitted between the close of the initial comment period and the re-opening of the comment period will be considered.

**ADDRESSES:** Draft Director's Order #35B is available on the Internet at *http://www.nps.gov/policy/DO–35Bdraft.htm.* Requests for copies of, and written comments on, the Director's Order should be sent to Tim Harvey, Chief, Park Facility Management Division, 1849 C Street, NW., Washington, DC 20240, or to his Internet address: *tim harvey@aps.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tim Harvey at (202) 513–7044.

**SUPPLEMENTARY INFORMATION:** When the NPS adopts documents containing new policy or procedural requirements that may affect parties outside the NPS, the documents are first made available for public review and comment before being adopted. A number of contacts have been made, prior to the issuance of this notice, to solicit input from potentially impacted groups and organizations.

*Public Availability of Comments:* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 9, 2009.

**Stephen E. Whitesell,**

*Associate Director, Park Planning, Facilities, and Lands.*

[FR Doc. 2010–2234 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### New Melones Lake Area Resource Management Plan, Tuolumne and Calaveras Counties, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of the Final Resource Management Plan/Environmental Impact Statement (RMP/EIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) has made available for public review a Final RMP/EIS for the New Melones Lake Area. The Final RMP/EIS describes and presents the environmental effects of four alternatives, including no action, for future use of the project area for recreation and resource protection and management.

A Notice of Availability of the joint Draft RMP/EIS was published in the **Federal Register** on November 2, 2009 (74 FR 56656). The written comment period on the Draft RMP/EIS ended on January 4, 2010. The Final RMP/EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

**DATES:** Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final RMP/EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

**ADDRESSES:** Send requests for a compact disc or a bound copy of the Final RMP/EIS to Melissa Vignau, Natural Resources Specialist, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630, or *telephone:* 916–989–7182. Copies of the Final RMP/EIS will be available for review at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2536.*

*See* **SUPPLEMENTARY INFORMATION** Section for locations where copies of the Final RMP/EIS are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Melissa Vignau, Natural Resources Specialist, Bureau of Reclamation, at 916–989–7182 or Dan Holsapple, Acting New Melones Resource Manager, Bureau of Reclamation, at 209–536–9094.

**SUPPLEMENTARY INFORMATION:** This planning activity encompasses approximately 30,000 acres of publicly accessible water and land owned and managed by Reclamation. The RMP, which will replace the New Melones Lake Area Master Plan of 1976, will be the primary management document for Reclamation's New Melones Lake Area, providing a defined purpose, vision, long-term goals, and management guidelines. It will be used by Reclamation as a framework for guiding decision-making related to future development potential, on-going management, public health and safety, and public use of the New Melones Lake Area.

The RMP attempts to enhance and expand the recreation opportunities while also providing more active protection and management of natural and cultural resources. The RMP is intended to be implemented over an extended period as determined by both user demand and need. To do so, the RMP provides goals and guidelines relating to natural, cultural and visual resources, water quality, circulation, visitor services, interpretation and operations.

The EIS is a program-level analysis of the potential environmental impacts associated with adoption of the RMP. The RMP is intended to be predominantly self-mitigating through implementation of RMP policies and management strategies, and the EIS will also include measures intended to reduce the adverse effects of the RMP.

Copies of the Final EIS are available for public review at the following locations:

- Bureau of Reclamation, Central California Area Office, New Melones

Lake Office, 6850 Studhorse Flat Road, Sonora, California 95370.

- City of Angels Camp, City Hall, S. Main Street, Angels Camp, CA 95222.
- Calaveras Planning Department, Calaveras County Government Center, 891 Mountain Ranch Road, San Andreas, CA 95249.
- San Andreas Central Library, 1299 Gold Hunter Road, San Andreas, CA 95249.
- Tuolumne County Administrator's Office, Administration Building, 2 South Green St., 4th Floor, Sonora, CA 95370.
- Sonora Main Branch Library, 480 Greenley Rd, Sonora, CA 95370.

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence including your personal identifying information, may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 21, 2009.

**Pablo R. Arroyave,**

*Deputy Regional Director, Mid-Pacific Region.*

[FR Doc. 2010–2699 Filed 2–5–10; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY–957400–10–L14200000–BJ0000]**

### Filing of Plats of Survey, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management and U.S. Forest Service, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the south and west boundaries, portions of the north boundary, and portions of the subdivisional lines, Township 54 North, Range 79 West, of the Sixth Principal Meridian, Wyoming, Group No. 791, was accepted October 9, 2009.

The supplemental plat showing a subdivision of certain sections, Township 54 North, Range 79 West, Sixth Principal Meridian, Wyoming, was accepted October 9, 2009, and is based upon the plat accepted April 20, 1949.

The plat and field notes representing the dependent resurvey of a portion of the north boundary, and the subdivisional lines, Township 18 North, Range 92 West, of the Sixth Principal Meridian, Wyoming, Group No. 792, was accepted October 9, 2009.

The plat and field notes representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of certain sections, Township 16 North, Range 86 West, of the Sixth Principal Meridian, Wyoming, Group No. 626, was accepted October 9, 2009.

The plat and field notes representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of section 33, Township 34 North, Range 110 West, Sixth Principal Meridian, Wyoming, Group No. 726, was accepted July 9, 2009.

The plat and field notes representing the dependent resurvey of portions of the Seventh Standard Parallel North through Ranges 107 and 108 West, the Thirteenth Auxiliary Guide Meridian West through Township 28 North, between Ranges 108 and 109 West, the east boundary and the subdivisional lines, Township 28 North, Range 108 West, Sixth Principal Meridian, Wyoming, Group No. 793, was accepted January 7, 2010.

The plat and field notes representing the dependent resurvey of a portion of the Fifth Standard Parallel North through Range 102 West and a portion of the subdivisional lines, Township 20 North, Range 102 West, and the metes-and-bounds survey of Tract 37, Townships 20 and 21 North, Range 102 West, Sixth Principal Meridian, Wyoming, Group No. 800, was accepted January 7, 2010.

The supplemental plat correcting the bearing on the North and South center line of section 26 as shown on sheet 1 of 2, Township 2 North, Range 5 East, Wind River Meridian, Wyoming, was accepted January 7, 2010.

The plat and field notes representing the dependent resurvey of a portion of the adjusted meander lines of the right and left banks of the Snake River, and the survey of the riparian partition lines and a portion of the present right and left banks of the Snake River, section 26, Township 41 North, Range 117 West, Sixth Principal Meridian, Wyoming, Group No. 652, was accepted January 13, 2010.

The plat and field notes representing the dependent resurvey of a portion of the Third Standard Parallel North, through Range 77 West, and a portion of the subdivisional lines, and the subdivision of sections 22, 27 and 34, Township 13 North, Range 77 West, Sixth Principal Meridian, Wyoming, Group No. 747, was accepted January 13, 2010.

The plat and field notes representing the dependent resurvey of a portion of the east boundary, the west and north boundaries and a portion of the subdivisional lines, Township 55 North, Range 79 West, Sixth Principal Meridian, Wyoming, Group No. 790, was accepted January 13, 2010.

The supplemental plat showing a subdivision of certain sections, Township 55 North, Range 79 West, Sixth Principal Meridian, Wyoming, was accepted January 13, 2010, and is based upon the plat accepted April 20, 1949.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 4, Township 12 North, Range 82 West, Sixth Principal Meridian, Wyoming, Group No. 795, was accepted January 13, 2010.

The plat and field notes representing the dependent resurvey of a portion of the Third Standard Parallel North, through Range 82 West, and a portion of the subdivisional lines, and the subdivision of section 33, Township 13 North, Range 82 West, Sixth Principal Meridian, Wyoming, Group No. 796, was accepted January 13, 2010.

The plat and field notes representing the dependent resurvey of the subdivisional lines, Township 17 North, Range 95 West, Sixth Principal Meridian, Wyoming, Group No. 797, was accepted January 13, 2010.

The plat and field notes representing the dependent resurvey of a portion of Lot 74 and a portion of the east boundary, Township 52 North, Range 94 West, Sixth Principal Meridian, Wyoming, Group No. 798, was accepted January 13, 2010.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: February 1, 2010.

**John P. Lee,**

*Chief Cadastral Surveyor, Division of Support Services.*

[FR Doc. 2010–2597 Filed 2–5–10; 8:45 am]

**BILLING CODE 4310–22–P**

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

*Purpose of Information Collection:* The forms are for use by the Commission in connection with investigation No. 332–510, *Small and Medium-Sized Enterprises: Characteristics and Performance,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the U.S. Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR by October 6, 2010.

**Summary of Proposal**

1. Number of forms submitted: 1.
2. Title of form: Business Firm Questionnaire.
3. Type of request: New.
4. Frequency of use: Industry questionnaire, single data gathering, scheduled for 2010.
5. Description of respondents: U.S. firms in the services and manufacturing sectors.
6. Estimated number of respondents: 9000.
7. Estimated total number of hours to complete the form per respondent: 2 hours.
8. Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

*Additional Information or Comment:* Copies of the forms and supporting documents may be obtained from project leaders William Deese (*william.deese@usitc.gov* or 202–205–2626) or Erland Herfindahl (*erland.herfindahl@usitc.gov* or 202–205–2374). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revision or language changes. Copies of any comments should be provided to Steve McLaughlin, Chief Information Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). Also, general information about the Commission can be obtained from its internet site (*http://www.usitc.gov*).

By order of the Commission.

Issued: January 27, 2010.

**Marilyn Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–2210 Filed 2–5–10; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 27, 2010, a proposed Consent Decree in *United States et al.* v. *Chevron U.S.A. Inc.,* Civil Action No. 10–cv–00375–EMC was lodged with the United States District Court for the Northern District of California.

The Consent Decree settles claims for natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.,* and certain state law claims, that arose in connection with historic discharges of hazardous substances into Castro Cove from a refinery owned by Chevron U.S.A. Inc. which is located in Richmond, California. Under the Consent Decree, the defendant will pay $2,850,000 jointly to the state and federal natural resource trustees for natural resource damages and will pay the natural resource trustees for any unreimbursed assessment costs incurred by the State and Federal natural resource trustees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Chevron U.S.A. Inc.,* D.J. Ref. # 90–11–3–09726.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–2567 Filed 2–5–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0024]**

### Information Collection Requirements for the Variance Regulations; Submission for Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to obtain OMB approval for the information collection requirements contained in Sections 6(b)6(A), 6(b)6(B), 6(b)6(C), 6(d), and 16 of the Occupational Safety and Health Act of 1970, and 29 CFR 1905.10, 1905.11, and 1905.12. These statutory and regulatory provisions specify the requirements for submitting applications to OSHA for temporary, experimental, permanent, and national defense variances.

**DATES:** Comments must be submitted (postmarked, transmitted, or received) by April 9, 2010.

**ADDRESSES:** Submit comments as follows:

- *Electronically:* Submit comments and attachments electronically at

*http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

• *Facsimile:* OSHA allows facsimile transmission of comments, including attachments, that are no longer than 10 pages in length. Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. However, if commenters do not transmit attachments (e.g., studies, journal articles), they must submit one hard copy of the attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20910. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA–2009–0024) so that the Agency can attach them to the appropriate comments.

• *Regular mail, express mail, or messenger or courier service:* When using one of these methods, submit one hard copy of comments and attachments (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2009–0024, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (*telephone:* 202–693–2350) (TTY: 877–889–5627). Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, or messenger or courier service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

• *Instructions:* All submissions must include the Agency name and the OSHA docket number for this Information Collection Request (ICR) (OSHA Docket No. OSHA–2009–0024). OSHA places comments and other material, including any personal information, in the public docket without revision, and will make this information available online at *http://www.regulations.gov.* For further information on submitting comments, see section IV ("Public Participation") of this notice.

• *Docket:* To read or download comments or other material in the docket, including the companion supporting statement, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. However, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the correct format, reporting burden (time and costs) is minimal, collection instruments are clearly understandable, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Sections 6(b)6(A), 6(b)6(B), 6(b)6(C), 6(d), and 16 of the OSH Act, and 29 CFR 1905.10, 1905.11, and 1905.12, specify the procedures that employers must follow to apply for a variance from the requirements of an OSHA standard. OSHA uses the information collected under these procedures to: (1) Evaluate the employer's claim that the alternative means of compliance would provide affected employees with the requisite level of health and safety protection; (2) assess the technical feasibility of the alternative means of compliance; (3) determine that the employer properly notified affected employees of the variance application and their right to a hearing; and (4) verify that the application contains the administrative information required by the applicable variance regulation. Currently, no specific forms are available for preparing variance applications and other documents that may accompany variance applications. OSHA is developing new forms to assist employers in preparing variance applications that comply with the information collection requirements contained in the OSH Act and variance regulations.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected;

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques; and

• Whether providing variance application forms on the Agency's Web site would reduce the burden on employers applying for variances.

## III. Proposed Actions

OSHA is requesting OMB approval for the information collection (paperwork) requirements contained in Sections 6(b)6(A), 6(b)6(B), 6(b)6(C), 6(d), and 16 of the Occupational Safety and Health Act of 1970, and 29 CFR 1905.10, 1905.11, and 1905.12. These statutory and regulatory provisions specify the requirements for submitting applications to OSHA for temporary, experimental, permanent, and national defense variances.

OSHA also is requesting OMB approval to develop and use variance application forms for the four types of variances specified by the OSH Act and variance regulations. The four types of variances are: Temporary variances (Section 6(b)(6)(A) of the Act; 29 U.S.C. 655; 29 CFR 1905.10); experimental variances (Section 6(b)(6)(C) of the Act; 29 U.S.C. 655); permanent variances (Section 6(d) of the Act; 29 U.S.C. 655; 29 CFR 1905.11); and national defense variances (Section 16 of the Act; 29 U.S.C. 665; 29 CFR 1905.12). The variance regulations specify the information that employers must provide when requesting one of these variances. The variance application forms would organize and clarify the information collection requirements for each type of variance by specifying the requirements in comprehensible language, and providing explanatory material. Employers applying for a variance could download and complete

the applicable form from OSHA's Web site. The forms would expedite the application process for employers, and ensure that the information on the application is complete and accurate.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to approve these information collection requirements and variance application forms.

*Type of Review:* Existing collection in use without an OMB control number.

*Title:* Information Collection Requirements for the Variance Regulations.

*OMB Number:* 1218–0NEW.

*Affected Public:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 12.

*Frequency of Recordkeeping:* On occasion.

*Total Responses:* 12.

*Average Time per Response:* Ranges from 2 hours for an employer to assemble the application documents to 16 hours to locate and assemble information required to complete an application.

*Estimated Total Burden Hours:* 366.

*Estimated Cost (Operation and Maintenance):* $0.

**IV. Public Participation: Submission of Comments on This Notice and Internet Access to Comments and Submissions**

Submit comments in response to this document: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (OSHA Docket No. OSHA–2009–0024). To supplement electronic submissions, upload document files electronically. Send hard copies of materials to supplement electronic or facsimile submissions to the OSHA Docket Office (*see* the **ADDRESSES** section of this notice). The additional materials must clearly identify the associated electronic comments by name, date, and docket number so OSHA can attach them to the comments. Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning delivery of materials by express mail, or messenger or courier service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

OSHA posts comments and other submissions without revision at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and birth dates. Some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* However, all submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on January 29, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–2659 Filed 2–5–10; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 10, 2010. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

*The applications received are as follows:*

1. *Applicant:* H. William Detrich, III, Department of Biology, 134 Mugar Hall, Northwestern University, Boston, MA 02115.

*Permit Application No: 2010–023.*

**Activity for Which Permit Is Requested**

Introduce non-indigenous species into Antarctica. The applicant plans to use *Escherichia coli* strain BL21DE3 for production of $^{35}$S-labeled proteins to be used in protein folding assays performed in the Palmer Station laboratories. The applicant will continue analysis of a cold-functioning chaperonin protein folding system from testis tissue of the Antarctica fish, *Gobionotothen gibberifrons.* To demonstrate that the chaperonin is functional, they must use protein substrates labeled with $^{35}$S-methionine. To obtain these proteins, they will express *G. gibberifrons* actin and tubulin substrates in *E. coli* in a medium supplemented with $^{35}$S-methionine.

The *E. coli* will not be released to the environment. Cultures will be autoclaved to kill the bacteria, and the waste will be disposed via the radioactive materials waste stream using approved protocols.

**Location**

Palmer Station, Anvers Island, Antarctic Peninsula.

*Dates:* April 10, 2010 to June 8, 2010.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2010–2653 Filed 2–5–10; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

### Application For a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Rulemaking and Adjudications.

The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

| Name of applicant, date of application, date received, application No., docket No. | Description of material | | End use | Recipient county |
|---|---|---|---|---|
| | Material type | Total quantity | | |
| DOE/NNSA–Y–12 National Security Complex December 21, 2009, December 28, 2009, XSNM3623, 11005844. | High-Enriched Uranium (93.35%). | 17.5 kilograms uranium (16.3 kilograms U–235). | To fabricate targets for irradiation in the National Research Universal (NRU) Reactor to produce medical isotopes. | Canada. |

For the Nuclear Regulatory Commission.

Dated this 2nd day of February 2010, at Rockville, Maryland.

**Stephen Dembek,**

*Acting Deputy Director, Office of International Programs.*

[FR Doc. 2010–2657 Filed 2–5–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–272, 50–311 and 50–354; NRC–2010–0043]**

### PSEG Nuclear LLC; Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License Nos. NPF–57, DPR–70, and DPR–75, issued to PSEG Nuclear LLC (PSEG, the licensee), for operation of the Hope Creek Generating Station (HCGS) and the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), located in Salem County, New Jersey. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt HCGS and Salem from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, HCGS and Salem would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. PSEG has proposed an alternate full compliance implementation date of December 17, 2010, approximately 8½ months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the site for HCGS and Salem.

The proposed action is in accordance with the licensee's application dated November 3, 2009, as supplemented by letters dated November 20, and December 22, 2009.

*The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the combined HCGS-Salem security system due to the significant number of engineering design packages, procurement needs, and installation activities.

*Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73, as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the

public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, as discussed above, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact (74 FR 13967).

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation date. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement (FES) for the HCGS, NUREG–1074, dated December 1984, or the FES for Salem dated April 1973.

*Agencies and Persons Consulted*

In accordance with its stated policy, on January 4, 2010, the NRC staff consulted with the New Jersey State officials, Mr. Jerry Humphreys (for HCGS) and Mr. Elliot Rosenfeld (for Salem) of the New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State officials had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 3, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093100222), as supplemented by letter dated December 22, 2009 (ADAMS Accession No. ML093640062). These documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Note, the above letters contain enclosures with redacted versions of safeguards information that is not available to the public. Another letter from the licensee dated November 20, 2009, also contains safeguards information and, accordingly, is not available to the public.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of January 2010.

For the Nuclear Regulatory Commission.

**Richard B. Ennis,**

*Senior Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–2656 Filed 2–5–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–263; NRC–2010–0045]**

## Northern States Power Company of Minnesota; Monticello Nuclear Generating Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date of certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License No. DPR–22, issued to Northern States Power Company of Minnesota (NSPM) for operation of Monticello Nuclear Generating Plant (MNGP) located in Wright County, Minnesota. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt MNGP from the required implementation date of March 31, 2010, for two new requirements of 10 CFR part 73. Specifically, MNGP would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. NSPM has proposed an alternate full compliance implementation date of June 30, 2011, approximately 15 months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the MNGP site.

The proposed action is in accordance with the licensee's application dated November 3, 2009.

*The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the MNGP security system due to impediments to construction such as planned refueling outages and winter weather conditions.

*Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption, if granted.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action were denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for MNGP in November 1972, as updated by Environmental Impact Statement, Supplement 26, dated August 2006 (NUREG–1437, Supplement 26, associated with renewing the operating license for MNGP for an additional 20 years).

*Agencies and Persons Consulted*

In accordance with its stated policy, on December 17, 2009, the NRC staff consulted with the Minnesota State official regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the redacted version of the licensee's letter dated November 3, 2009; the unredacted version contains safeguards information and, accordingly, is not available to the public. The redacted version, dated December 15, 2009 (Accession No. ML100190133) may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of January 2010.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–2668 Filed 2–5–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–282 and 50–306; NRC–2010–0046]**

## Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) § 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company—Minnesota (NSPM, the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), located in Goodhue County, Minnesota. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt PINGP from the required implementation date of March 31, 2010, for several new requirements of 10 CFR part 73. Specifically, PINGP would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010 deadline. NSPM has proposed an alternate full compliance implementation date of June 30, 2011, approximately 15 months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the PINGP site.

The proposed action is in accordance with the licensee's application dated November 5, 2009, as supplemented by letters dated November 30, 2009

(Agencywide Documents Access and Management System (ADAMS) Accession No. ML100050096) and December 17, 2009.

*The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time to perform the required upgrades to the PINGP security system considering the time typically required to design and construct modifications of this scope, and the impediments to construction such as the planned refueling outages at both Units 1 and 2 and weather-related issues.

*Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73, as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13967). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926, 13967 (March 27, 2009)].

The licensee currently maintains a security system acceptable to the NRC and will continue to provide acceptable physical protection of PINGP. Therefore, the extension of the implementation date of the new requirements of 10 CFR part 73 to June 30, 2011, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010 implementation deadline. The environmental impacts of the proposed exemption and the "no action" alternative are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant, Units 1 and 2, dated May 1973.

*Agencies and Persons Consulted*

In accordance with its stated policy, on January 8, 2010, the NRC staff consulted with the Minnesota State official, Mr. Stephen Rakow of the Minnesota Department of Commerce, Office of Energy Security, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 5, 2009, as supplemented by letters dated November 30, and December 17, 2009. The November 5 and December 17, 2009 letters and portions of the November 30, 2009 submittal contain security-related information and, accordingly, are not available to the public. Other parts of the November 30, 2009 letter may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of February 2010.

For the Nuclear Regulatory Commission.

**Thomas J. Wengert,**

*Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–2667 Filed 2–5–10; 8:45 am]

**BILLING CODE 7590–01–P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before April 9, 2010.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 7th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Sandra Johnston, Office of Financial Assistance, 202–205–7528,

*sandra.johnston@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** This Form is used to assist borrowers (20% or greater owners, corporate officers, or loan guarantors) in preparing their total net worth by listing all of their assets and liabilities, including current income.

*Title:* "Personal Financial Statement."

*Description of Respondents:* On Occasion.

*Form Number:* 413.

*Annual Responses:* 91,937.

*Annual Burden:* 137,095.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Rachel Newman-Karton, Office of Small Business Development Centers, 202–619–1816, *rachel.nnewman-karton@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** SBA's resource partners are required under their cooperative agreement with the agency to provide business management training to small business owners and nascent owners. This information is needed by SBA to monitor the quality of the training Small Businesses receive from SCORE and other Co-Sponsored and Resources Partners.

*Title:* "Training Program Evaluation."

*Description of Respondents:* On Occasion.

*Form Number:* 20.

*Annual Responses:* 200,000.

*Annual Burden:* 40,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 2010–2617 Filed 2–5–10; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Advisory Committee on Veterans Business Affairs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

**DATES:** Thursday, February 18, 2010, from 9 a.m. to 5 p.m. in the Administrator's Large Conference room, located on the 7th floor and on Friday, February 19, 2010, from 9 a.m. to 5 p.m. in the Eisenhower Conference room side b, located on the 2nd floor.

**ADDRESSES:** U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include presentations regarding "Business Counseling and Training."

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by February 10, 2010 by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 619–1697, Fax number: (202) 481–6085, e-mail address: *cheryl.simms@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619–1697; e-mail address: *cheryl.simms@sba.gov*, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: February 2, 2010.

**Meaghan Burdick,**

*SBA Committee Management Officer.*

[FR Doc. 2010–2646 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Schedule 14D–1F; OMB Control No. 3235–0376 ; SEC File No. 270–338.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14D–1F (17 CFR 240.14d–102) may be used by any person making a cash tender or exchange offer for securities of any foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory and less than 40% of the foreign private issuer's securities are held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 18 respondents annually for a total reporting burden of 36 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must

be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2638 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request; Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 14f–1; OMB Control No. 3235–0108; SEC File No. 270–127.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Exchange Act Rule 14f–1 (17 CFR 240.14f–1) requires a registrant to disclose a change in a majority of the directors of the registrant. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 172 respondents for a total annual burden of 3,096 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2637 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request; Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 13e–1; OMB Control No. 3235–0305; SEC File No. 270–255.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 13e–1 (17 CFR 240.13e–1) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information require by the Rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. Public companies are the respondents. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 20 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 50 hours (2.5 hours per response x 20 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2636 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Industry Guides; OMB Control No. 3235–0069; SEC File No. 270–069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Industries Guides are used by registrants in certain industries as disclosure guidelines to be followed in disclosing information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The information filed with the Commission using the Industry Guides permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The information required by the Industry Guides is filed on occasion and is mandatory. All information is provided to the public. The Commission estimates for administrative purposes only that the total annual burden with respect to the Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to

the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2635 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form F–8; OMB Control No. 3235–0378; SEC File No. 270–332.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–8 (17 CFR 239.38) may be used to register securities of certain Canadian issuers under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that will be used in an exchange offer or business combination. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Form F–8 takes approximately one hour per response to prepare and is filed by approximately 10 respondents. We estimate that 25% of one hour per response (15 minutes) is prepared by the company for a total annual reporting burden of 3 hours (15 minutes/60 minutes per response × 10 responses = 2.5 hours rounded to 3 hours).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2634 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61457; File No. SR–CTA/CQ–2009–03]**

### Consolidated Tape Association; Notice of Filing of the Fifteenth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and Eleventh Substantive Amendment to the Restated Consolidated Quotation Plan

February 1, 2010.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 608 thereunder,[2] notice is hereby given that on November 2, 2009, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan participants ("Participants") [3] filed with the Securities and Exchange Commission ("Commission") a proposal [4] to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the "Plans").[5] The proposal represents the fifteenth substantive amendment to the CTA Plan ("Fifteenth Amendment to the CTA Plan") and the eleventh substantive amendment to the CQ Plan ("Eleventh Amendment to the CQ Plan"), and reflects changes unanimously adopted by the Participants. The Fifteenth Amendment to the CTA Plan and the Eleventh Amendment to the CQ Plan ("Amendments") would amend the Plans to provide that the Participants pay the Network B Administrator a fixed annual fee in exchange for its performance of Network B administrator functions under the Plans. In addition, the Amendments seek to accommodate recent changes in names and addresses of certain Participants. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

**I. Rule 608(a)**

*A. Description and Purpose of the Amendments*

*Network Administrator Fees under the Plans.* Section XII ("Financial Matters") of the CTA and Section IX ("Financial Matters") of the CQ Plan each provides that a network's Operating Expenses are to be deducted from the network's Gross Income in determining the amounts that the network's administrator distributes to the Participants. Section XII(c)(i) ("Determination of Operating Expenses") of the CTA Plan currently provides that a CTA network's Operating Expenses include all costs and expenses "associated with, relating to, or resulting from, the generation, consolidation or dissemination of the CTA's network's last sale price information." Likewise, Section IX(c)(i) ("Determination of Operating Expenses") of the CQ Plan currently provide that a network's

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

[4] On January 13, 2010, the CTA filed a revised transmittal letter indicating, among other technical changes, that the Participants also proposed to make changes in the names and addresses of certain Participants ("Transmittal Letter").

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is also a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

Operating Expenses include all costs and expenses that the network's administrator incurs in "collecting, processing and making available that CQ network's quotation information."

*Proposed Revision.* The Network B Administrator has noted that accounting for operating costs is administratively burdensome, especially the allocation of organization overhead costs to the Network B Administrator function. As a result, the Network B Participants have determined that paying the Network B Administrator a fixed fee in exchange for its Network B administrative services would be more efficient.

Therefore, the Participants propose to replace their payment to the Network B Administrator of Operating Costs with their payment to the Network B Administrator of a fixed fee. (The Network A Administrator similarly receives a fixed fee for its performance of administrative functions under the CTA and CQ Plans and the Participants understand that Nasdaq receives a fixed fee for its performance of administrative functions under the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.")

For calendar year 2009, the Network B Participants propose to set the fixed fee at $3,000,000. This amount will compensate the Network B Administrator for its Network B Administrative services during 2009 under both the CTA Plan and the CQ Plan.

*Annual Increase.* For each subsequent calendar year, the Network B Participants propose to increase (but not decrease) the amount of the payment by the percentage increase (if any) in the annual cost-of-living adjustment that the U.S. Social Security Administration applies to Supplemental Security Income for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent. For example, if the Social Security Administration's cost of living adjustment for Supplemental Security Income were to be three percent for calendar year 2010, then the Participants' fixed payment to the Network B Administrator for 2010 would increase by three percent to $3,090,000.

*Biannual Review.* To assure that the fixed fee bears some relationship to the costs that the Network B Administrator incurs in providing Network B administrative services, the Network B Administrator will provide a report every two years that highlights any significant changes to CTA Network B and CQ Network B administrative expenses during the preceding two years. The Participants will review the report and determine by majority vote whether to continue to pay the fixed fee at its then current level or to adjust the fee in some manner.

*Payment of the Fee.* In order to pay the fee to the Network B Administrator, the Participants authorize the Network B Administrator to deduct, on a quarterly basis, one-quarter of that calendar year's fixed payment from the aggregate of CTA Network B Gross Income and CQ Network B Gross Income before determining that quarter's Net Income under the CTA Plan and the CQ Plan.

If any Participant's share of Net Income for CTA Network B and CQ Network B for any calendar year is less than its pro rata share of the annual fixed payment for that year, the Participant shall be responsible for the difference.

*Extraordinary Expenses.* The Participants' payment of the fixed fee will compensate the Network B Administrator for all ordinary and customary operating expenses that it incurs in performing the network administrator functions under the CTA and CQ Plans. However, it does not compensate the Network B Administrator for extraordinary expenses that the Network B Administrator may incur on behalf of the Network B Participants.

Extraordinary expenses include such things as that portion of legal and audit expenses and marketing and consulting fees that are outside of the ordinary functions that the Network B Administrator performs. For example, extraordinary expenses would include such costs as legal fees related to prosecution of a legal proceeding against a vendor that fails to pay applicable charges and fees relating to a marketing campaign that the Participants may determine to undertake to popularize stock trading.[6]

In addition, the Participants propose to amend the Plans to reflect changes in the corporate names and street addresses of NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.), NASDAQ OMX PHLX, Inc. (formerly Philadelphia Stock Exchange, Inc.) and NYSE Amex, Inc. (formerly American Stock Exchange LLC). They also propose to conform the language signifying the status of BATS Exchange, Inc. as a national securities exchange to the language used for the other Plan Participants

The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta,*) at the principal office of the CTA, and at the Commission's Public Reference Room.

*B. Additional Information Required by Rule 608(a)*

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

Upon Commission approval of the Amendments, the Participants intend to implement the fixed fee immediately in order to make it effective for the 2009 calendar year. That is, for all of 2009, the Network B Participants would pay the Network B Administrator the fixed fee rather than operating costs.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The amendment will impose no burden on competition.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plans as a result of the Amendments.

6. Approval by Sponsors in Accordance with Plan

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants must execute a written amendment to the Plans before the Amendments can become effective. The Amendments are so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

c. Method of Frequency of Processor Evaluation

Not applicable.

[6] The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus not included in the proposed Amendments: "Network B Administrator will not incur any extraordinary expense on behalf of the Network B Participants unless the Network B Participants determine by majority vote to approve the incurrence of that extraordinary expense." This language is not part of the proposed Amendments.

d. Dispute Resolution

Not applicable.

**II. Rule 601(a)**

*A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

Not applicable.

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Not applicable.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace Execution*

Not applicable.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CTA/CQ–2009–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA/CQ–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CTA/CQ–2009–03 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2586 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 9105; Release No. 61468]**

## Securities Act of 1933; Securities Exchange Act of 1934; Order Regarding Review of FASB Accounting Support Fee for 2010 Under Section 109 of the Sarbanes-Oxley Act of 2002

February 2, 2010.

The Sarbanes-Oxley Act of 2002 (the "Act") provides that the Securities and Exchange Commission (the "Commission") may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the "recoverable budget expenses" of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting standard setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2010. In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2010.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Governmental Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local governmental entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2010 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

*It is ordered,* pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

[7] 17 CFR 200.30–3(a)(27).

[1] Financial Reporting Release No. 70.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–2591 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61452; File No. SR–BX–2010–010]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Describing the BX Ouch BBO Feed

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2010, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by BX. BX has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX submits this proposal regarding the availability of the BX Ouch BBO Feed, a data feed that represents BX's internal view of the best bid and offer among all market centers other than BX (the "BBO"), which is provided at no cost.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX submits this proposal regarding the availability of the BX Ouch BBO Feed, a data feed that represents BX's internal view of the best bid and offer among all market centers other than BX. The BX Ouch BBO Feed is available to all BX members equally at no charge, and offers all firms transparent, real-time data concerning BX's internal view of the BBO. This data feed reflects BX's view of the BBO, at any given time, based on orders executed on BX and updated quote information from the SIPs. BX makes the BX Ouch BBO Feed available to all market participants via subscription through an established connection to BX through extranets, direct connection, and Internet-based virtual private networks.

The BX Ouch BBO Feed contains the following data elements: symbol, bid price, and ask price.[4] Unlike the BX TotalView feed, the Ouch BBO feed does not contain information about individual orders, either those residing within the BX system or those executed or routed by BX. Unlike the SIP feeds containing the National Best Bid and Offer ("NBBO"), the Ouch BBO Feed does not identify either the market center quoting the BBO or the size of the BBO quotes. It merely contains the symbol and bid and offer prices.

By making the BX Ouch BBO Feed data available, BX enhances market transparency and fosters competition among orders and markets. Member firms may use the BX Ouch BBO Feed to more accurately price their orders based on BX's view of what the BBO is at any point in time, which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on BX, thus avoiding price adjustments by BX based on a quote that is no longer available. Additionally, members can price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

At this time, BX does not have plans to charge an additional fee associated with the receipt of the BX Ouch BBO Feed. Should BX determine to charge fees associated with the BX Ouch BBO Feed, BX will submit a proposed rule change to the Commission in order to implement those fees.

[4] BX also provides a time stamp and message type field for reference.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Sections 6(b)(5) of the Act,[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. BX believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of BX Ouch BBO Feed data and by clarifying its availability.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [10]

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BX has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX requests that the Commission waive the 30-day operative delay because it would permit BX to immediately provide the information regarding the BX Ouch BBO Feed access requirements to market participants. The Commission believes that waiving the 30-day operative delay [11] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml.)* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2010–010 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2581 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61454; File No. SR–Phlx–2010–12]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2010 NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on February 1, 2010.[3] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective February 1, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a

[3] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60966 (November 9, 2009) (SR–Phlx–2009–094) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Rule 1034 regarding the Penny Pilot.

[5] *See* Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness).

quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on February 1, 2010, based on ADVs for the six months ending December 31, 2009.

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 131 | ABT | Abbott Laboratories. | 192 | LEAP | Leap Wireless International Inc. |
| 169 | AEM | Agnico-Eagle Mines Ltd. | 205 | LLY | Eli Lilly & Co. |
| 151 | AET | Aetna Inc. | 162 | LO | Lorillard Inc. |
| 156 | AFL | Aflac Inc. | 152 | LOW | Lowe's Cos Inc. |
| 181 | AKAM | Akamai Technologies Inc. | 176 | M | Macy's Inc. |
| 178 | AMAT | Applied Materials Inc. | 155 | MCO | Moody's Corp. |
| 117 | AMR | AMR Corp. | 217 | MET | MetLife Inc. |
| 166 | ANF | Abercrombie & Fitch Co. | 187 | MMM | 3M Co. |
| 172 | APC | Anadarko Petroleum Corp. | 140 | MU | Micron Technology Inc. |
| 209 | ATVI | Activision Blizzard Inc. | 177 | NUE | Nucor Corp. |
| 145 | BBD | Banco Bradesco SA. | 157 | OXY | Occidental Petroleum Corp. |
| 190 | BCRX | BioCryst Pharmaceuticals Inc. | 158 | PARD | Poniard Pharmaceuticals Inc. |
| 218 | BK | Bank of New York Mellon Corp/The. | 150 | PEP | PepsiCo Inc/NC. |
| 194 | BRCM | Broadcom Corp. | 141 | PM | Philip Morris International Inc. |
| 184 | BTU | Peabody Energy Corp. | 185 | PNC | PNC Financial Services Group Inc. |
| 144 | BX | Blackstone Group LP. | 216 | QID | ProShares UltraShort QQQ. |
| 200 | CAL | Continental Airlines Inc. | 149 | SHLD | Sears Holdings Corp. |
| 211 | CF | CF Industries Holdings Inc. | 175 | SLM | SLM Corp. |
| 142 | CMCSA | Comcast Corp. | 212 | SLW | Silver Wheaton Corp. |
| 203 | CSX | CSX Corp. | 215 | SQNM | Sequenom Inc. |
| 143 | CVS | CVS Caremark Corp. | 153 | STEC | STEC Inc. |
| 174 | CX | Cemex SAB de CV. | 219 | STX | Seagate Technology. |
| 183 | DD | EI du Pont de Nemours & Co. | 202 | SU | Suncor Energy Inc. |
| 146 | ERTS | Electronic Arts Inc. | 207 | TCK | Teck Resources Ltd. |
| 121 | EWJ | iShares MSCI Japan Index Fund. | 196 | TEVA | Teva Pharmaceutical Industries Ltd. |
| 186 | FDX | FedEx Corp. | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118 | FNM | Federal National Mortgage Association. | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| 182 | FRE | Federal Home Loan Mortgage Corp. | 168 | UAUA | UAL Corp. |
| 179 | GILD | Gilead Sciences Inc. | 154 | URE | ProShares Ultra Real Estate. |
| 198 | GLW | Corning Inc. | 180 | UTX | United Technologies Corp. |
| 170 | HBC | HSBC Holdings PLC. | 204 | WFR | MEMC Electronic Materials Inc. |
| 197 | HES | Hess Corp. | 115 | WFT | Weatherford International Ltd. |
| 161 | HL | Hecla Mining Co. | 165 | WLP | WellPoint Inc. |
| 193 | HOG | Harley-Davidson Inc. | 191 | XLB | Materials Select Sector SPDR Fund. |
| 206 | HON | Honeywell International Inc. | 173 | XRX | Xerox Corp. |
| 210 | JOYG | Joy Global Inc. | 148 | XTO | XTO Energy Inc. |
| 213 | JWN | Nordstrom Inc. | 130 | YRCW | YRC Worldwide Inc. |
| 137 | KFT | Kraft Foods Inc. | | | |

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1) thereunder,[9] the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–12 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2583 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61456; File No. SR–BX–2010–011]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add 75 Classes to the Penny Pilot Program

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASDAQ OMX BX, Inc. (the "Exchange") proposes to designate 75 options classes to be added to the Penny Pilot Program, as referenced in Chapter V, Section 33 of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The Exchange intends to notify BOX Options Participants of the classes to be added to the Penny Pilot Program via Regulatory Circular. The text of the proposed Regulatory Circular is attached as Exhibit 2.[3]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 19, 2009 the Exchange submitted a proposed rule change[4] with the Securities and Exchange Commission ("Commission") to, among other things, expand the number of classes included in the Penny Pilot Program over four successive quarters, with 75 classes added in each of November 2009,[5] February 2010, May 2010, and August 2010.[6] Options classes with high premiums will be excluded for the quarterly additions.[7]

Based on trading activity for the six months ending December 31, 2009, the Exchange proposes to add the following 75 classes to the Penny Pilot Program on February 1, 2010:

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the text of the proposed Regulatory Circular is attached at Exhibit 2 to the Form 19b–4, but is not attached to this Notice.

[4] *See* Securities and Exchange Act Release No. 60886 (October 27, 2009), 74 FR 56897 (November 3, 2009) (SR–BX–2009–067). This proposal was effective immediately upon filing.

[5] The Exchange filed a proposal similar to the present proposal for the November 2, 2009 expansion of 75 classes. *See* Securities and Exchange Act Release No. 60950 (November 6, 2009), 74 FR 58666 (November 6, 2009) [sic] (SR–BX–2009–069). This proposal was effective immediately upon filing.

[6] The quarterly additions will be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on February 1, 2010 shall be determined using data from the six month period ending December 31, 2009.

[7] The threshold for designation as "high priced" at the time of selection of new classes to be included in the Penny Pilot Program is $200 per share or a calculated index value of 200. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

| Symbol | Company name | Symbol | Company name |
|---|---|---|---|
| ABT | Abbott Laboratories. | LEAP | Leap Wireless International Inc. |
| AEM | Agnico-Eagle Mines Ltd. | LLY | Eli Lilly & Co. |
| AET | Aetna Inc. | LO | Lorillard Inc. |
| AFL | Aflac Inc. | LOW | Lowe's Cos Inc. |
| AKAM | Akamai Technologies Inc. | M | Macy's Inc. |
| AMAT | Applied Materials Inc. | MCO | Moody's Corp. |
| AMR | AMR Corp. | MET | MetLife Inc. |
| ANF | Abercrombie & Fitch Co. | MMM | 3M Co. |
| APC | Anadarko Petroleum Corp. | MU | Micron Technology Inc. |
| ATVI | Activision Blizzard Inc. | NUE | Nucor Corp. |
| BBD | Banco Bradesco SA. | OXY | Occidental Petroleum Corp. |
| BCRX | BioCryst Pharmaceuticals Inc. | PARD | Poniard Pharmaceuticals Inc.[8] |
| BK | Bank of New York Mellon Corp/The. | PEP | PepsiCo Inc/NC. |
| BRCM | Broadcom Corp. | PM | Philip Morris International Inc. |
| BTU | Peabody Energy Corp. | PNC | PNC Financial Services Group Inc. |
| BX | Blackstone Group LP. | QID | ProShares UltraShort QQQ. |
| CAL | Continental Airlines Inc. | SHLD | Sears Holdings Corp. |
| CF | CF Industries Holdings Inc. | SLM | SLM Corp. |
| CMCSA | Comcast Corp. | SLW | Silver Wheaton Corp. |
| CSX | CSX Corp. | SQNM | Sequenom Inc. |
| CVS | CVS Caremark Corp. | STEC | STEC Inc. |
| CX | Cemex SAB de CV. | STX | Seagate Technology. |
| DD | EI du Pont de Nemours & Co. | SU | Suncor Energy Inc. |
| ERTS | Electronic Arts Inc. | TCK | Teck Resources Ltd. |
| EWJ | iShares MSCI Japan Index Fund. | TEVA | Teva Pharmaceutical Industries Ltd. |
| FDX | FedEx Corp. | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| FNM | Federal National Mortgage Association. | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| FRE | Federal Home Loan Mortgage Corp. | UAUA | UAL Corp. |
| GILD | Gilead Sciences Inc. | URE | ProShares Ultra Real Estate. |
| GLW | Corning Inc. | UTX | United Technologies Corp. |
| HBC | HSBC Holdings PLC. | WFR | MEMC Electronic Materials Inc. |
| HES | Hess Corp. | WFT | Weatherford International Ltd. |
| HL | Hecla Mining Co. | WLP | WellPoint Inc. |
| HOG | Harley-Davidson Inc. | XLB | Materials Select Sector SPDR Fund. |
| HON | Honeywell International Inc. | XRX | Xerox Corp. |
| JOYG | Joy Global Inc. | XTO | XTO Energy Inc. |
| JWN | Nordstrom Inc. | YRCW | YRC Worldwide Inc. |
| KFT | Kraft Foods Inc. | | |

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes added to the Penny Pilot Program in a manner consistent with prior rule changes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Exchange Act[11] and Rule 19b–4(f)(1) thereunder,[12] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing BOX rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would

[8] Please note that PARD is presently not listed for trading on BOX. If PARD is listed for trading on BOX at a later date it will be subject to the applicable minimum trading increments as set forth in Chapter V, Section 6(b) of the BOX Rules.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

otherwise further the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2010–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2010–011 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2585 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61458; File No. SR–ISE–2010–02]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rules Related to Cutoff Time for Contrary Exercise Advice Submissions

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The International Securities Exchange, LLC (the "Exchange" or the "ISE") proposes to amend Rule 1100 in order to extend the cut-off time to submit contrary exercise advices. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Rule 1100 to extend the cut-off time to submit contrary exercise advices ("Contrary Exercise Advice", or, "CEA")[3] to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language.[4]

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separately from the OCC requirement, under Exchange Rule 1100 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 1100 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

[4] The Exchange proposes to reorganize the current rule text so that the requirement that exercise decisions must be made by 5:30 p.m. Eastern Time is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(2) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Supplementary Material .03 to Rule 1100 because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d)(iii) in the proposal.

submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 1100.

Currently under Rule 1100, option holders have until 5:30 p.m.[5] on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non customer accounts after 5:30 p.m. However, the current rule gives Exchange members an additional one hour, up to 6:30 p.m., to submit these CEA instructions to the Exchange where such member uses an electronic submission process.[6]

This current process allowing members an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003.[7] In 2003, the Ex-by-Ex thresholds were $0.75 for customers and $0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold is $0.01 for all accounts. This decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions timely.

The Exchange proposes to extend the current 6:30 p.m. deadline for submitting CEA instructions to the Exchange by one additional hour, up to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to address concerns expressed by members that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to modify the language in paragraph (g) of the current rule (new paragraph (h)), which allows a member up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing a member to submit a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The Exchange will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to address Exchange member concerns is industry-wide, and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA. This additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Exchange members an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Exchange members' burden of processing an increasing number of contrary exercise advices and enable them to more easily manage and process these instructions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] All referenced times are Eastern Time.

[6] If members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

[7] *See* Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex–2001–92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR–ISE–2003–20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR–PCX–2003–47); and 48639 (October 16, 2003), 68 FR 60764 (October 23,2003) (SR–Phlx–2003–65).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

*Electronic Comments*

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–ISE–2010–02 on the subject line.*

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–02 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2587 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61455; File No. SR–NASDAQ–2010–013]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on February 1, 2010.[3] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com/Filings/*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective February 1, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on February 1, 2010, based on ADVs for the six months ending December 31, 2009.

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 131 | ABT | Abbott Laboratories | 192 | LEAP | Leap Wireless International Inc. |
| 169 | AEM | Agnico-Eagle Mines Ltd | 205 | LLY | Eli Lilly & Co. |
| 151 | AET | Aetna Inc | 162 | LO | Lorillard Inc. |

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009)(SR–NASDAQ–2009–091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60965 (November 9, 2009)(SR–NASDAQ–2009–097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Chapter VI, Section 5 regarding the Penny Pilot.

[5] *See* Securities Exchange Act Release No. 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091)(notice of filing and immediate effectiveness).

| Nat'l ranking | Symbol | Company name | Nat'l ranking | Symbol | Company name |
|---|---|---|---|---|---|
| 156 | AFL | Aflac Inc | 152 | LOW | Lowe's Cos Inc. |
| 181 | AKAM | Akamai Technologies Inc | 176 | M | Macy's Inc. |
| 178 | AMAT | Applied Materials Inc | 155 | MCO | Moody's Corp. |
| 117 | AMR | AMR Corp | 217 | MET | MetLife Inc. |
| 166 | ANF | Abercrombie & Fitch Co | 187 | MMM | 3M Co. |
| 172 | APC | Anadarko Petroleum Corp | 140 | MU | Micron Technology Inc. |
| 209 | ATVI | Activision Blizzard Inc | 177 | NUE | Nucor Corp. |
| 145 | BBD | Banco Bradesco SA | 157 | OXY | Occidental Petroleum Corp. |
| 190 | BCRX | BioCryst Pharmaceuticals Inc | 158 | PARD | Poniard Pharmaceuticals Inc. |
| 218 | BK | Bank of New York Mellon Corp/The | 150 | PEP | PepsiCo Inc/NC. |
| 194 | BRCM | Broadcom Corp | 141 | PM | Philip Morris International Inc. |
| 184 | BTU | Peabody Energy Corp | 185 | PNC | PNC Financial Services Group Inc. |
| 144 | BX | Blackstone Group LP | 216 | QID | ProShares UltraShort QQQ. |
| 200 | CAL | Continental Airlines Inc | 149 | SHLD | Sears Holdings Corp. |
| 211 | CF | CF Industries Holdings Inc | 175 | SLM | SLM Corp. |
| 142 | CMCSA | Comcast Corp | 212 | SLW | Silver Wheaton Corp. |
| 203 | CSX | CSX Corp | 215 | SQNM | Sequenom Inc. |
| 143 | CVS | CVS Caremark Corp | 153 | STEC | STEC Inc. |
| 174 | CX | Cemex SAB de CV | 219 | STX | Seagate Technology. |
| 183 | DD | EI du Pont de Nemours & Co | 202 | SU | Suncor Energy Inc. |
| 146 | ERTS | Electronic Arts Inc | 207 | TCK | Teck Resources Ltd. |
| 121 | EWJ | iShares MSCI Japan Index Fund | 196 | TEVA | Teva Pharmaceutical Industries Ltd. |
| 186 | FDX | FedEx Corp | 135 | TLT | iShares Barclays 20+ Year Treasury Bond Fund. |
| 118 | FNM | Federal National Mortgage Association | 214 | TZA | Direxion Daily Small Cap Bear 3X Shares. |
| 182 | FRE | Federal Home Loan Mortgage Corp | 168 | UAUA | UAL Corp. |
| 179 | GILD | Gilead Sciences Inc | 154 | URE | ProShares Ultra Real Estate. |
| 198 | GLW | Corning Inc | 180 | UTX | United Technologies Corp. |
| 170 | HBC | HSBC Holdings PLC | 204 | WFR | MEMC Electronic Materials Inc. |
| 197 | HES | Hess Corp | 115 | WFT | Weatherford International Ltd. |
| 161 | HL | Hecla Mining Co | 165 | WLP | WellPoint Inc. |
| 193 | HOG | Harley-Davidson Inc | 191 | XLB | Materials Select Sector SPDR Fund. |
| 206 | HON | Honeywell International Inc | 173 | XRX | Xerox Corp. |
| 210 | JOYG | Joy Global Inc | 148 | XTO | XTO Energy Inc. |
| 213 | JWN | Nordstrom Inc | 130 | YRCW | YRC Worldwide Inc. |
| 137 | KFT | Kraft Foods Inc | | | |

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1) thereunder,[9] Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–013 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–013 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2584 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61461; File No. SR–NASDAQ–2010–006]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Press Release Requirements for Listed Companies

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to modify certain of the press release requirements for listed companies. Nasdaq will implement the proposed rule upon approval. The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

There are a number of Nasdaq rules related to the issuer compliance process that require a company to disclose information in a press release or through the news media.[3] These rules generally were adopted to address inconsistent issuer disclosure practices and reflected the view, prevalent at that time, that issuing a press release was the only way to assure wide dissemination of an important event. However, in 2002, after the Commission adopted Regulation FD,[4] Nasdaq amended its rules to allow listed companies to provide disclosure of material news via any Regulation FD compliant means.[5] Since that time Nasdaq has had the opportunity to observe market reaction to news disclosed in ways other than via a press release. Nasdaq's experience since adopting this rule indicates that there is broad acceptance of Regulation FD compliant methods of disclosure, such as through the use of a Form 8–K.

In addition, the Commission has substantially modified its rules regarding the disclosure of information on a Form 8–K.[6] As a result Nasdaq's requirements in some instances are duplicative of the Form 8–K requirements and Nasdaq sees companies forced to make multiple disclosures regarding the same event. Nasdaq believes that investors have come to rely upon Form 8–K disclosure and notes that Form 8–K disclosures are readily available to investors and the information reported on them is widely reported on by the news media. As such, to the extent information is reported on a Form 8–K, Nasdaq believes that duplicate disclosure through a press release is unnecessary and an extra burden on listed companies.

Given the foregoing, Nasdaq believes it is appropriate to modify the following rules to permit disclosure either through a press release or by filing a Form 8–K where required by Commission rules:

[3] Nasdaq interprets the requirement to disclose information through the news media to be satisfied by the issuance of a press release.

[4] 17 CFR 243.100–103. Regulation FD permits a company to disclose material information using a method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

[5] Exchange Act Release No. 46901 (November 25, 2002), 67 FR 72011 (December 3, 2002).

[6] Exchange Act Release No. 49424 (March 16, 2004), 69 FR 15594 (March 25, 2004).

• Rules 5250(b)(3), 5810(b), 5840(k) and IM–5810–1, which require disclosure of notifications from Nasdaq staff or an Adjudicatory Body [7] regarding a company's compliance with the listing standards. Rules 5250(b)(3) and 5810(b) require a company to "make a public announcement through the news media" disclosing the receipt of a notice that the company does not meet a listing standard, that staff has determined to delist the company, or that is a Public Reprimand Letter.[8] IM–5810–1 provides the time frame for companies to make these disclosures and describes the consequences of failing to do so. Rule 5840(k) requires that a company that receives a Public Reprimand Letter from an Adjudicatory Body must make "a public announcement through the news media" disclosing receipt of that letter. Nasdaq proposes to modify these rules to allow the company, in each case, to make a public announcement by "filing a Form 8–K, where required by SEC rules, or by issuing a press release." [9] However, a company that is late in filing a required periodic report with the Securities and Exchange Commission would still be required to issue a press release announcing that it has received notice that it does not meet that requirement. Nasdaq also proposes to clarify in each of these rules that notification of these disclosures should be made to the MarketWatch Department through Nasdaq's electronic disclosure submission system at least ten minutes prior to the notification to the public.[10]

• Rule 5635(f), which requires a company to "make a public announcement through the news media" when it receives an exception to the shareholder approval requirements because compliance would jeopardize the company's financial viability. Nasdaq proposes instead to allow companies to make this announcement "by filing a Form 8–K, where required by SEC rules, or by issuing a press release." Nasdaq notes that companies that receive an exemption are also required to mail this notice to all shareholders at least ten days before issuing securities in reliance on the exception.

• Rule 5225(a)(3), which requires a company to "publicize through, at a minimum, a public announcement through the news media" any change in the terms of a listed unit. Nasdaq proposes to modify this rule to allow the company to "make a public announcement by filing a Form 8–K, where required by SEC rules, or by issuing a press release" of any change in the terms of the unit.

Similarly, Rule 5250(c)(2) requires a company that is a foreign private issuer to disclose interim financial results "in a press release and on a Form 6–K." Nasdaq proposes to eliminate the requirement that this information be published in a press release, while maintaining the requirement that it be on a Form 6–K. A foreign private issuer would still be free to disclose this information in a press release if it chooses.

Nasdaq proposes to eliminate the requirement contained in Rule 5250(b)(2) that a company issue a press release announcing the receipt of an audit opinion that expresses doubt about the ability of the company to continue as a going concern. This requirement, which was adopted in 2003,[11] is duplicative of disclosure already provided in the Company's annual filing with the Commission, which must be made available to all shareholders under Nasdaq rules, and which must be distributed to shareholders under the Commission's Proxy Rules.[12] Under these rules, a company must include the audit opinion in its annual report, without regard to whether it expresses doubt about the ability of the company to continue as a going concern.[13] Given that the audit opinion is already required to be publicly disclosed, Nasdaq has found that the separate press release announcing the receipt of the opinion is duplicative and therefore can be confusing to investors. Of course if a company fails to include the audit opinion in its annual filing, Nasdaq would consider the filing deficient and would move to delist the company on that basis.[14]

Nasdaq is not proposing any change to Rule 5840(j), regarding the voluntary delisting of a company, because the press release requirement in that rule is required by Exchange Act Rule 12d2–2(c).[15] Nasdaq is also maintaining the requirement in Rule 5635(c)(4) and IM–5365–1, which require that a company relying on the inducement exception to the requirement to obtain shareholder approval for equity compensation awards must "disclose in a press release" specific information about the equity award.

Finally, Rules 5810(b) and 5840(k) require companies to notify multiple Nasdaq departments before they issue certain disclosures.[16] These duplicative notice requirements are burdensome to listed companies and provide no regulatory benefit to Nasdaq. As a result, Nasdaq proposes to modify these rules to require companies to provide these disclosures to the MarketWatch Department using the electronic disclosure submission system accessible at *http://www.nasdaq.net*.[17] MarketWatch will notify other Nasdaq departments when necessary.[18]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general and with Sections 6(b)(5) of the Act,[20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with

[7] Rule 5805(a) defines an "Adjudicatory Body" as the Hearings Panel, the Nasdaq Listing and Hearing Review Council, or the Nasdaq Board, or a member thereof.

[8] Current Rule 5250(b)(3) is also renumbered by this filing as Rule 5250(b)(2).

[9] Item 3.01 of Form 8–K requires a company to file a Form 8–K when it receives notice from Nasdaq that the company does not satisfy a listing standard or when Nasdaq issues a Public Reprimand Letter to the company. As such, Nasdaq's requirements are, in some cases, duplicative of the Form 8–K disclosure requirement and a company could be required to issue a press release under Nasdaq's rules and a Form 8–K under the Commission's rules containing the same information. A company could satisfy the revised requirement by filing the required Form 8–K, thereby eliminating this dual disclosure and any confusion it creates, while ensuring that the information remains publicly disclosed.

[10] The Commission notes that Nasdaq recently filed a proposed rule change that provides that if the public release of material information is made outside of Nasdaq market hours, companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. *See* NASDAQ–2010–008.

[11] Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

[12] 17 CFR 240.14a–1. *See* Item 13 of Schedule 14A, 17 CFR 240.14a–101.

[13] Rule 2–01 of Regulation S–X, 17 CFR 210.2–01.

[14] Nasdaq is also proposing to make a conforming change to Rule 5615(a)(3) to eliminate the reference to the going concern requirement because it will no longer apply. In addition, Nasdaq is proposing to remove the reference in Rule 5615(a)(3) to the requirement for a foreign private issuer to enter into a listing agreement because there is no need to single out this requirement from all the others of the requirements of the Rule 5000 Series to which a foreign private issuer is subject.

[15] 17 CFR 240.12d2–2(c).

[16] Under these rules, a company must notify the MarketWatch, Listing Qualifications, and Hearings Departments.

[17] Companies are already required to use the electronic disclosure submission service to notify MarketWatch prior to the distribution of material news. *See* Rule 5250(b)(1) and IM–5250–1. *See also* Exchange Act Release No. 55856 (June 4, 2007), 72 FR 32383 (June 12, 2007) (approving SR–NASDAQ–2007–029).

[18] Nasdaq is also proposing: (i) to add a title to Rule 5250(b)(1) to clarify the text; and (ii) to use capitalization for a defined term in Rule 5615. These are non-substantive changes.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to facilitate companies' compliance with Nasdaq rules by aligning Nasdaq's disclosure requirements with those of the Commission. Nasdaq notes that the proposed changes to permit disclosure by a Form 8–K will not eliminate or reduce information now available to investors, but will minimize duplicative disclosures.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ-2010–006 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2010–006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[21] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–006 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2633 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

[21] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61466; File No. SR–CBOE–2010–005]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

February 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 2, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Prior to the commencement of trading options on Index-Linked Securities, CBOE proposes to establish strike price intervals and trading hours for these new products. The text of the proposed rule change is available on CBOE's Web site at (*http://www.cboe.org/legal*), on the Commission's Web site at *http://www.sec.gov*, at CBOE, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), the Exchange is proposing to establish strike price intervals and trading hours for these new products.

The Commission has approved CBOE's and other option exchanges' proposals to enable the listing and trading of options on Index-Linked Securities.[3] Options trading has not commenced to date and is contingent upon the Commission's approval of The Options Clearing Corporation's ("OCC") proposed supplement to the Options Disclosure Document ("ODD") that will provide disclosure regarding options on Index-Linked Securities.[4]

$1 Strikes for ETN Options

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish that strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the proposed addition of new Interpretation and Policy .09 to Rule 5.5.

Without discounting the differences between exchange-traded funds ("ETFs") and Index-Linked Securities, the Exchange seeks to extend the trading conventions applicable to options on ETFs to options on Index-Linked Securities. CBOE contends that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs.[5] The Exchange believes that $1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowed [sic] them to establish positions that are better tailored to meet their investment objectives.

The Exchange states that it is seeking to establish $1 strikes for ETN options (where the strike price is less than $200) because CBOE believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on exchange-traded funds ("ETFs").[6] Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[7] Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ETN options and the Exchange believes that investors will be better served if $1 strike price intervals are available for ETN options (where the strike price is less than $200).[8]

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for ETN options.[9]

Trading Hours for ETN Options

Similar to the trading hours for ETF options, the Exchange proposes to amend Interpretation and Policy .03 to Rule 6.1 by adding new subparagraph (b) to provide that options on Index-Linked Securities, as defined under Interpretation and Policy .13 to Rule 5.3, may be traded on the Exchange until 3:15 p.m. each business day. The Exchange is also proposing to make a technical change to Interpretation and Policy .03 to Rule 6.1.

It is expected that other options exchanges that have adopted rules providing for the listing and trade of options on Index-Linked Securities will submit similar proposals.

2. Statutory Basis

Because the Exchange believes that the current rule proposal will lessen investor confusion by having strike price intervals and trading hours established prior to the commencement of trading in options on Index-Linked Securities, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comment**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2010–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

[3] *See e.g.,* Securities Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

[4] OCC previously received Commission approval to clear options based on Index-Linked Securities. *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14).

[5] *See* Interpretation and Policy .08 to Rule 5.5. *See also* Securities Exchange Act Release No. 46507 (September 17, 2007), 67 FR 60266 (September 25, 2002) (permitting list of options on ETFs at $1 strike price intervals) (SR–CBOE–2002–54).

[6] *See* Amendment No. 1.

[7] *See supra* note 5.

[8] *See* Amendment No. 1.

[9] *See Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–CBOE–2010–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–005 and should be submitted on or before February 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2632 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61467; File No. SR–NASDAQ–2010–020]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

February 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on February 1, 2010. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is introducing pricing for its SAVE routing strategy, which was recently filed on an immediately effective basis in SR–NASDAQ–2010–018.[3] In the SAVE strategy, at the option of the entering party, orders either route to NASDAQ OMX BX ("BX"), check the NASDAQ book, and then route to other destinations on the routing table for SAVE, or check the NASDAQ book first and then route to routing table destinations, which may include BX. For orders pursuing this routing approach, NASDAQ will pass through all fees assessed and rebates offered by BX, charge $0.0010 per share executed for orders that execute at the New York Stock Exchange ("NYSE"), and charge $0.0026 per share executed for orders that execute in other away venues. Orders that execute in the NASDAQ Market Center will be charged the normal NASDAQ execution charges.

NASDAQ is also amending its fee schedule to reflect recent modifications to Rule 4758, which governs order routing. NASDAQ amended that rule to describe various routing options with greater specificity than had previously been provided by the rule. Whereas the NASDAQ fee schedule contained in Rule 7018 had previously contained descriptive references to the routing parameters of particular routing options, the schedule is now being amended to refer to specific order routing options by the same name used in Rule 4758, such as SCAN, DOT, or TFTY. NASDAQ believes that this change will increase the clarity of both its routing rule and its fee schedule. The amended fee schedule also clarifies that TFTY, MOPP, SAVE, and directed orders are not counted for purposes of determining a member's shares of liquidity routed under provisions that base certain discounts on the number of shares of liquidity routed, removed and/or provided.

NASDAQ is also removing several unnecessary provisions from Rule 7018. Specifically, NASDAQ is deleting references to (i) orders in NASDAQ-listed securities that execute at BX prior to routing to NYSE or NYSE Amex, since neither venue trades NASDAQ-listed securities, and (ii) "other orders" that execute at BX without attempting to execute at NASDAQ, since all possible execution parameters for orders that execute at BX without checking the NASDAQ book are covered by other fee provisions.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is introducing fees for the new SAVE routing option, under which members pay a low fee to route to the NYSE and other destinations to encourage members to make greater use of NASDAQ's routing services. The changes will result in a reduction of fees paid by members that make use of SAVE, as compared with currently

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–61460 (February 1, 2010) (SR–NASDAQ–2010–018).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

available routing options offered by NASDAQ.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ believes that the change will further enhance the competitiveness of its fees in comparison with those charged by other venues, and that its fees are reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–020 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–020 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2631 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61451; File No. SR–NASDAQ–2010–012]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Describing the NASDAQ Ouch BBO Feed

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq submits this proposal regarding the availability of the NASDAQ Ouch BBO Feed, a data feed that represents Nasdaq's internal view of the best bid and offer among all market centers other than Nasdaq (the "BBO"), which is provided at no cost.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq submits this proposal regarding the availability of the NASDAQ Ouch BBO Feed, a data feed that represents Nasdaq's internal view of the best bid and offer among all market centers other than Nasdaq. The NASDAQ Ouch BBO Feed is available to all NASDAQ members equally at no charge, and offers all firms transparent, real-time data concerning Nasdaq's internal view of the BBO. This data feed reflects Nasdaq's view of the BBO, at any given time, based on orders executed on Nasdaq and updated quote information from the SIPs. Nasdaq makes the NASDAQ Ouch BBO Feed available to all market participants via subscription through an established connection to Nasdaq through extranets, direct connection, and Internet-based virtual private networks.

The NASDAQ Ouch BBO Feed contains the following data elements: Symbol, bid price, and ask price.[4] Unlike the Nasdaq TotalView feed, the Ouch BBO feed does not contain information about individual orders, either those residing within the Nasdaq system or those executed or routed by Nasdaq. Unlike the SIP feeds containing the National Best Bid and Offer ("NBBO"), the Ouch BBO Feed does not identify either the market center quoting the BBO or the size of the BBO quotes. It merely contains the symbol and bid and offer prices.

By making the NASDAQ Ouch BBO Feed data available, Nasdaq enhances market transparency and fosters competition among orders and markets. Member firms may use the NASDAQ Ouch BBO Feed to more accurately price their orders based on Nasdaq's view of what the BBO is at any point in time, which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on Nasdaq, thus avoiding price adjustments by Nasdaq based on a quote that is no longer available. Additionally, members can price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

At this time, Nasdaq does not have plans to charge an additional fee associated with the receipt of the NASDAQ Ouch BBO Feed. Should Nasdaq determine to charge fees associated with the NASDAQ Ouch BBO Feed, Nasdaq will submit a proposed rule change to the Commission in order to implement those fees.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Sections 6(b)(5) of the Act,[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of NASDAQ Ouch BBO Feed data and by clarifying its availability.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay because it would permit Nasdaq to immediately provide the information regarding the NASDAQ Ouch BBO Feed access requirements to market participants. The Commission believes that waiving the 30-day operative delay[11] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[4] Nasdaq also provides a time stamp and message type field for reference.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–012 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2580 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61459; File No. SR–ISE–2010–07]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Currency Options

February 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its incentive plan for market makers in a newly listed foreign currency option and to establish fees for transactions in the newly listed foreign currency option. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the Exchange's incentive plan for market makers on a newly listed foreign currency option, specifically, the Brazilian real ("BRB") [3] and to establish fees for transactions in options on BRB. Options on BRB began trading on the Exchange on January 19, 2010. As such, this proposed fee change will be operative and effective on January 19, 2010.

In order to promote trading in options on BRB, the Exchange proposes to add BRB to the incentive plan the Exchange currently has in place for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO") and the Swedish krona ("SKA").[4] Market makers will be able to enter into the incentive plan until March 31, 2010.[5] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers. Under the incentive plan, the Exchange will waive the applicable transaction fees for both the Early Adopter FXPMM [6] and all Early Adopter FXCMMs [7] that make a market in BRB for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange will pay the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in BRB and will pay up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan, i.e., market makers that begin to quote and trade in BRB after March 31, 2010, will be charged regular transaction fees for trades in this product.

The Exchange is proposing to adopt an execution fee of $0.40 per contract for all Public Customer Orders [8] in options on BRB.[9] The amount of the execution fee for all Firm Proprietary orders for options on BRB will be $0.20 per contract and the execution fee for all non-Early Adopter ISE Market Makers in options on BRB shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker orders in equity options.[10] Finally, the amount of the execution fee for all non-ISE Market Maker orders for options on BRB shall be $0.45 per contract.[11] The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission previously approved the trading of options on BRB. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] *See* Securities Exchange Act Release No. 60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

[5] *See* Securities Exchange Act Release No. 61334 (January 12, 2010) (SR–ISE–2009–115).

[6] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[7] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[8] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[9] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2010, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 60175 (June 25, 2009), 74 FR 32026 (July 6, 2009) (SR–ISE–2009–36).

[10] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[11] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation

Exchange will not charge a Payment for Order Flow fee for this product.

The Exchange also proposes to waive transaction charges for all Early Adopter Market Makers in BRB in order to further encourage trading in this product. The Exchange believes that the revenue generated from customer, firm proprietary and non-ISE market maker transaction charges and increased order flow would offset the transaction fees that would otherwise be applied to market makers in BRB, thereby allowing the Exchange to recoup those fees while increasing order flow and generating increased revenues.

The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Finally, as a housekeeping matter, the Exchange proposes to make a non-substantive clarifying change to its Schedule of Fees. Specifically, the Exchange proposes to insert the words "options on" in certain existing fee line items to clarify that the subject fee is applicable to options transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the incentive plan will generate additional order flow to the Exchange by creating incentives to trade options on BRB as well as defray operational costs for Early Adopter Market Makers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

Mechanisms and for Orders entered into the Price Improvement Mechanism by the member initiating the price improvement order is $0.20 per contract.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2010–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2010–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2010–07 and should be submitted on or before March 1, 2010.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–2588 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 6895]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Fiery Pool: The Maya and the Mythic Sea"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Fiery Pool: The Maya and the Mythic Sea," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Peabody Essex Museum, Salem, MA, from on or about March 27, 2010, until on or about July 18, 2010; the Kimbell Art Museum, Fort Worth, TX, from on or about August 29, 2010, until on or about January 2, 2011; the Saint Louis Art Museum, St. Louis, MO, from on or about February 13, 2011, until on or about May 8, 2011, and possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 0522–0505.

Dated: February 1, 2010.

**Maura M. Pally,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2010–2692 Filed 2–5–10; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 6868]**

### Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 24 and 25 at the U.S. Department of State and the Boeing Company, Arlington, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: January 15, 2010.

**Jeffrey W. Culver,**

*Director of the Diplomatic Security Service, U.S. Department of State.*

[FR Doc. 2010–2684 Filed 2–5–10; 8:45 am]

**BILLING CODE 4710–43–P**

## DEPARTMENT OF TRANSPORTATION

### ITS Joint Program Office; Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

**AGENCY:** Research and Innovative Technology Administration, U.S. Department of Transportation.

**ACTION:** Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting by Web conference of the Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC). The Web conference will be held on February 24, 2010, from 3 p.m. to 4 p.m.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-chartered on February 7, 2010, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office, the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

*The following is a summary of the Web conference tentative agenda:* (1) Welcome by RITA Deputy Administrator; (2) Meeting purpose and agenda review; (3) Overview of ITSPAC purpose, roles, and responsibilities; (4) Overview of the ITS Joint Program Office organization, management, and proposed mission; (5) Overview of the ITS Five-Year Strategic Research Plan; and (6) Brief ethics review.

Participation in the Web conference is open to the public, but limited conference lines will be available on a first come, first served basis. Members of the public who wish to participate must notify Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126 not later than February 18, 2010, at which time the Web conference URL and teleconference phone number will be provided. Members of the public may present oral statements at the meeting with the approval of Ms. Shelley Row, Director of the ITS Joint Program Office. Non-committee members wishing to present oral statements or obtain information should contact Mr. Glasscock.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue, SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS Joint Program Office requests that written comments be submitted prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 2nd day of February 2010.

**Shelley Row,**

*Director, ITS Joint Program Office.*

[FR Doc. 2010–2649 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

**[Docket No. RITA–2009–0004]**

### Notice of Submission to OMB for an Information Collection: National Census of Ferry Operators

**AGENCY:** Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the Nation's ferry operations. The information to be collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will be published on the BTS Web page. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 1, 2009 [74 FR 62880].

**DATES:** Comments must be submitted on or before March 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Steve, (202) 366–4108, NCFO Project Manager, BTS, RITA, Department of Transportation, 1200 NJ Ave., SE., Room E34–431, Washington, DC 20590. Office hours are from 9 a.m. to 6:30 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Census of Ferry Operators (NCFO).

*Type of Request:* Approval of an information collection.

*Affected Public:* Approximately 260 ferry operators nationwide.

*Abstract:* The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59, Section 1801(e) requires that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

The BTS data collection will rely on a Web-based survey with telephone follow-up. An electronic version of the questionnaire will also be available to respondents on request. Data will be collected from the entire population of ferry operators (estimate 260 or less). The survey will request the respondents to provide information such as: The points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), peak periods of use, and intermodal connectivity.

*Data Confidentiality Provisions:* The National Census of Ferry Operators may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.17. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide.

*Frequency:* The survey will be conducted every other year.

*Estimated Burden:* The total annual burden (in the year that the survey is conducted) is estimated to be just under 87 hours (that is 20 minutes per respondent for 260 respondents equals 5,200 minutes or 86.7 hours *i.e.,* 86:42).

*Response to Comments:* There were no public comments posted in response to the 60-day notice.

*Public Comments Invited:* Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC, on this 2nd day of February, 2010.

**Steven D. Dillingham,**

*Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration, U.S. Department of Transportation.*

[FR Doc. 2010–2650 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

**BNSF Railway Company**

*[Docket Number FRA–2009–0123]*

The BNSF Railway Company (BNSF) seeks approval of the proposed modification to the traffic control signal system over the Fort Madison Swing Bridge on the Chicago Division, Chillicothe Subdivision, LS 7000 between Milepost (MP) 231.2 and MP 232.6, near Fort Madison, Iowa.

The proposed modification consist of the removal of the power derails at MP 231.2 and MP 232.6.

The reason for proposed changes is to upgrade signal circuitry by removal of pole line track circuits and replace with coded track circuits. The project includes removal of derails with replacement being holding signals used to govern movement over the Fort Madison Swing Bridge.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0123) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 2, 2010.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 2010–2612 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

**CSX Transportation, Inc.**

*[Docket Number FRA–2010–0010]*

The CSX Transportation, Inc. seeks approval of the proposed modification of the bridge tender controlled signals to automatic signals at the Big Manatee Drawbridge, Bradenton, Florida, Milepost AZA 915.8, Palmetto Subdivision, Jacksonville Division. The modification consist of the conversion of bridge tender controlled signals to automatic signals.

The reason given for the proposed change is that the drawbridge tender position is being eliminated. Train crews will request the bridge open and close via DTMF radio. Signals will clear automatically for train movements once the bridge has been closed and locked, and an approach circuit is occupied.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0010) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC, on February 2, 2010.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 2010–2614 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

**CSX Transportation, Inc.**

*[Docket Number FRA–2010–0009]*

The CSX Transportation, Inc. seeks approval of the proposed modification of the Traffic Control System at Milepost ANJ822.2 on the Lineville Subdivision, Atlanta Division, at La Grange, Georgia. The modification consist of the conversion of dispatcher controlled holdout signals, 96L and 96R, to automatic signals, 8221 and 8222.

The reason given for the proposed change is that the controlled signals must be relocated due to an overhead bridge project, and dispatcher controlled signals are no longer needed for present day operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since

the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0009) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 2, 2010.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 2010–2613 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Hyundia-Kia America Technical Center, Inc.

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the Hyundai-Kia Motors Corporation (HATCI) petition for exemption of the Hyundai VI vehicle line in accordance with 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard.*

**DATES:** The exemption granted by this notice is effective beginning with the 2011 Model Year (MY).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–439, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

**SUPPLEMENTARY INFORMATION:** In a petition dated September 11, 2009, Hyundai requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Hyundai VI vehicle line, beginning with MY 2011. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under Section § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per model year. Hyundai petitioned the agency to grant an exemption for its VI vehicle line beginning with MY 2011. In its petition, Hyundai provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Hyundai will install its passive Smart-key Immobilizer device and alarm system (audible and visual) on the VI vehicle line as standard equipment. According to Hyundai, the Smart-key immobilizer device allows the driver/operator to access and operate the vehicle by using a valid FOB key and that no other actions by mechanical key or a remote control unit are necessary. Hyundai further states that the immobilizer is automatically activated when the electronic key code of the FOB key is removed from the smart-key immobilizer control unit. The audible and visual alarm system is automatically activated when the electronic key code of the FOB key is removed from the smart-key immobilizer control unit, all vehicle doors and the hood are closed, and all the doors are locked. If the device is armed and unauthorized entry is attempted, the vehicle's horn will sound and the hazard lamps will flash.

Hyundai stated that its Smart-key immobilizer device also features passive vehicle access, trunk access and door locking. Specifically, Hyundai stated that if a valid FOB key is in the range defined by this device, the device will automatically detect and authenticate the FOB via wireless communication between the FOB key and the Smart-key immobilizer unit. If communication is authenticated, the device will allow passive accessibility to the doors and/or trunk, and/or passive locking of all the doors.

In addressing the specific content requirements of 543.6, Hyundai provided information on the reliability and durability of the device. Hyundai conducted component tests and on-vehicle tests for the Smart-key immobilizer system and the alarm system in accordance with the EEC, UNECE, Korea standard and Hyundai in-house standard. Specifically, Hyundai provided approval numbers for all tests performed

In support of its belief that its antitheft device will be as effective as compliance with the parts marking requirements in reducing and deterring vehicle theft, Hyundai referenced and provided an April 2006 report by JP Research, Inc., which concluded that antitheft devices were consistently much more effective in reducing thefts when compared to parts marking. The JP Research report showed that of the 24 vehicle lines studied, those with antitheft devices installed were 70% more effective than parts marking in deterring theft. Hyundai also provided theft data on other manufacturer's vehicle lines (Lincoln Town Car, Chrysler Town and Country, Mazda MX–5 Miata and Mazda 3) that have been exempted from the theft prevention standard. Hyundai stated

that it believes that this data supports the conclusion of the JP Research report that the installation of antitheft devices is at least as effective as complying with the parts marking requirements in reducing and deterring theft. Theft rates for the Lincoln Town Car, Chrysler Town and Country, Mazda MX–5 Miata and Mazda 3 all are below the median theft rate of 3.5826. Hyundai also compared the theft rates for its Azera model which has been installed with an antitheft device as standard equipment since (MY 2006) and was granted an exemption from the theft prevention standard in MY 2008 to the overall theft rate reported by NHTSA for model years (MYs') 2006 and 2007. The theft rate for the MY 2006 Hyundai Azera was 0.7758 which was comparatively lower than the overall theft rate of 2.08 for MY 2006. The theft rate for the MY 2007 Azera was 1.8003, also comparatively lower than the overall theft rate of 1.86 for MY 2007. Conclusively, Hyundai stated that it believes the data indicate that installation of antitheft devices are effective in reducing thefts.

Based on the supporting evidence submitted by Hyundai on the device, the agency believes that the antitheft device for the VI vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon supporting evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Hyundai has provided adequate reasons for its belief that the antitheft device for the Hyundai VI vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Hyundai provided about its device.

For the foregoing reasons, the agency hereby grants in full Hyundai's petition for an exemption for the MY 2011 VI vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements with respect to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Hyundai decides not to use the exemption for this vehicle line, it must formally notify the agency. If such a decision is made, the vehicle line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Hyundai wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2010–2595 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Vehicle Theft Prevention Standard; Mazda

**AGENCY:** National Highway Traffic Safety Administration (NHTSA). Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of Mazda Motor Corporation (Mazda) of the Mazda2 vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

**DATES:** The exemption granted by this notice is effective beginning with the 2011 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–302, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

**SUPPLEMENTARY INFORMATION:** In a petition dated September 24, 2009, Mazda requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2011 Mazda2 vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Mazda provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Mazda2 vehicle line. Mazda will install its passive transponder-based, electronic immobilizer antitheft device as standard

equipment on its Mazda2 vehicle line beginning with MY 2011. Major components of the antitheft device will include a powertrain control module, an immobilizer control module, a security light, transceiver and a transponder ignition key. Mazda stated that the integration of the transponder into the ignition key prevents any inadvertent activation of the device. When the ignition is turned to the "ON" position a code is transmitted from the transponder to the immobilizer control module. If the transponder code matches the code programmed in the immobilizer control module, the vehicle's engine can be started. If the transponder code does not match, the engine will be disabled. Activation of the immobilization device occurs when the ignition is turned to the "OFF" position. Mazda's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Mazda stated that the antitheft device to be installed on the Mazda2 vehicle line is based on the design of the immobilizer device installed on the Ford Mustang GT, Cobra, Taurus LX, SHO and Sable LS models beginning with the 1996 model year. The device will provide protection against unauthorized use (*i.e.,* starting and engine fueling), but the device will not provide any visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights or horn alarm).

In addressing the specific content requirements of 543.6, Mazda provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Specifically, Mazda stated that the components of the immobilization device are tested in climatic, mechanical and chemical environments, and that the device is also tested for its immunity to various electromagnetic radiation and electric conduction.

Mazda stated that the design and the operation of the electronic engine immobilizer device makes conventional theft methods such as hot-wiring or attacking the ignition lock cylinder ineffective, and virtually eliminates drive-away thefts. Mazda also stated that there is no way to start the vehicle by mechanically overriding the device and that successful key duplication is virtually impossible.

There is currently no available theft rate data published by the agency for the Mazda2 vehicle line. However, Mazda provided data on the effectiveness of other similar antitheft devices installed on vehicle lines in support of its belief that its device will be at least as effective as those comparable devices. Mazda stated that according to National Crime Information Center's (NCIC) theft information, there was a 70% reduction in theft experienced when comparing MY 1997 Mustang vehicle thefts (with immobilizers) to MY 1995 Mustang vehicle thefts (without immobilizers). Mazda also stated that the Highway Loss Data Institute's (HLDI) September 1997 Theft Loss Bulletin reported an overall theft loss decrease of approximately 50% for both the Ford Mustang and Taurus models upon installation of an antitheft immobilization device. Additionally, Mazda stated that supportively, a July 2000 International Institute for Highway Safety news release reported that when comparing theft loss data before and after equipping vehicles with passive immobilizer devices, the data showed an average theft reduction of approximately 50% for vehicles with immobilizer devices.

Based on the evidence submitted by Mazda, the agency believes that the antitheft device for the Mazda2 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency also notes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Mazda has provided adequate reasons for its belief that the antitheft device for the Mazda2 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Mazda provided about its device.

For the foregoing reasons, the agency hereby grants in full Mazda's petition for exemption for the Mazda2 vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2011 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Mazda decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2010–2599 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**CSX Transportation, Inc.**

*(Waiver Petition Docket Number FRA–2009–0126)*

The CSX Transportation, Inc. (CSXT) requests a waiver of compliance from the requirements of 49 CFR part 240, Qualification and Certification of Locomotive Engineers, specifically Section 129. CSXT's specific request is for a waiver from the requirement that certain remote control operators (RCOs) have annual operational performance evaluations as provided under the procedures pursuant to Sections 240.129(b), (c), and (e).

Section 240.129(b) requires a railroad to have procedures for monitoring the operational performance of those it has determined to be qualified as a "locomotive engineer." Section 240.129(c) provides the requirements of the procedures referenced under (b), including that the engineer, "shall be annually monitored (check ride) by a Designated Supervisor of Locomotive Engineers" and is either accompanied by the designated supervisor" or "has his or her train handling activities electronically recorded." CSXT has a program to comply with these requirements. Section 240.129(e) requires the railroad to have an operational testing and monitoring program in place, and to perform at least one unannounced test each calendar year. This program must be designed to monitor compliance with railroad operating rules and other directives, and to examine and test such compliance.

CSXT is using a process whereby the engineer and RCO qualification endorsement is placed into the employee's crew management profile when qualified, and the same engineer or RCO endorsement is removed when certain FRA requirements are not met. Presently, the Manager of FRA Certification or the System Road Foreman of Engines notifies the Crew Management Center and has the employee's engineer or RCO status changed from active to inactive, thereby prohibiting such employee from working a locomotive engineer's or RCO's assignment.

CSXT has a number of employees certified under 49 CFR part 240 for RCO service who are not currently performing the duties that require this certification. Some of these individuals have bid on and taken positions in other service while others have been furloughed. As a result, these individuals are not in a position to operate remote control equipment. CSXT requests relief from Section 240.129 to avoid having to perform operational performance evaluations on individuals who are currently out of RCO service. Waiving performance of these evaluations on individuals not currently active as RCOs is consistent with the general application of Part 240, which applies to "any person who operates locomotives."

These individuals are not working as RCOs, nor will they be allowed to work as RCOs under CSXT's control system. Performance of the operational evaluation on individuals not currently working as RCOs causes safety concerns because it requires calling a person in for the sole purpose of an evaluation and also because it would lead to those individuals achieving technical compliance with the rule only to go back to prolonged service in areas other than a RCO.

If CSXT's waiver request is granted, CSXT will provide any RCO wishing to return to active service a monitoring observation and an unannounced operating rule operational test within 30 days of the employee's return to RCO service.

CSXT requests this waiver as a method of ensuring that active RCOs receive timely and appropriate training and monitoring as required for compliance with the rule. Through granting this waiver, CSXT believes there will be no negative impact on safety. As described, CSXT will not permit any RCO to operate a remote control locomotive without being in full compliance with part 240, including Section 129, of which relief is requested. CSXT believes this process will promote enhanced safety by providing for the operational performance evaluations to be done as these RCOs return to active service when safe operation of the equipment is their focus.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0126) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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Issued in Washington, DC, on February 2, 2010.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 2010–2606 Filed 2–5–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Request for Citizens Coinage Advisory Committee Membership Applications

**ACTION:** Request for Citizens Coinage Advisory Committee Membership Applications.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b), the United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as a member representing the interests of the general public in the coinage of the United States. The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals for circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury on the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations on the mintage levels for any commemorative coin recommended.

The total membership of the CCAC consists of eleven voting members appointed by the Secretary of the Treasury, as follows:

- One person specially qualified by virtue of his or her education, training or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

The purpose of this request for membership applications is to fill a vacancy in one of the three positions held by persons who can represent the interests of the general public in the coinage of the United States. Each member is appointed to a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately seven to nine times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the Committee meetings and related activities.

*Application Deadline:* March 31, 2010.

*Receipt of Applications:* Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing his or her reasons for seeking and qualifications for membership, by fax to 202–756–6525 or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: Greg Weinman. Submissions must be postmarked no later than March 31, 2010. Interested individuals who submitted applications for appointment to the CCAC under previous requests for membership applications for a position to represent the interests of the general public in the coinage of the United States do not need to apply again under this request for membership to be considered for this open position. However, such individuals may improve their chances of being selected by submitting new application materials, or updating their previous applications, before the March 31, 2010 deadline.

**Notice Concerning Delivery of First-Class and Priority Mail**

The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

**FOR FURTHER INFORMATION CONTACT:** Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7463.

Dated: February 2, 2010.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. 2010–2645 Filed 2–5–10; 8:45 am]

**BILLING CODE P**

## TENNESSEE VALLEY AUTHORITY

### Watts Bar Reservoir Land Management Plan, Loudon, Meigs, Rhea, and Roane Counties, TN

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision.

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA has updated its 1988 land management plan (1988 Plan) for 16,036 acres of TVA public land on Watts Bar Reservoir in Tennessee. On November 19, 2009, the TVA Board of Directors (TVA Board) decided to adopt the preferred alternative (Alternative B, Modified Development and Recreation) identified in the final environmental impact statement (FEIS) for the Watts Bar Reservoir Land Management Plan (WBRLMP). Under the alternative adopted by the Board, TVA-managed public land has been allocated into broad use categories or "zones," including Project Operations (Zone 2), Sensitive Resource Management (Zone 3), Natural Resource Conservation (Zone 4), Industrial (Zone 5), Developed Recreation (Zone 6), and Shoreline Access (Zone 7). The allocations were made in a manner that implements TVA's November 2006 Land Policy.

**FOR FURTHER INFORMATION CONTACT:** Amy Henry, NEPA Specialist, Environmental Permitting and Compliance, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1499; telephone (865) 632–4045 or e-mail *abhenry@tva.gov.*

**SUPPLEMENTARY INFORMATION:** Watts Bar Reservoir is a 67-year-old multipurpose impoundment of the Tennessee River formed by Watts Bar Dam and Lock, which is located at Tennessee River Mile 530 in Meigs and Rhea counties, Tennessee. TVA currently has available about 16,036 acres of TVA-controlled public land for management on Watts Bar Reservoir. At full pool, the reservoir shoreline length is 721 miles, and the surface area is about 39,000 acres. Approximately 47 percent of this shoreline is subject to deeded or implied rights of access across TVA land for water use facilities, shoreline corridors, and other uses.

In January 2009, TVA began developing a recovery plan for the December 2008 coal ash spill at Kingston Fossil Plant. Since the publication of the WBRLMP and FEIS in February 2009, nine parcels totaling 184 acres have been identified as being affected by the spill and consequently have been removed from the alternatives considered by the FEIS. The land use allocation of these affected parcels will be considered after the recovery planning process now in progress is completed.

TVA manages public land on Watts Bar Reservoir to protect and enhance natural resources, foster economic development, and improve the quality of life in the Tennessee Valley. The purpose of the land planning effort is to apply a systematic method of evaluating and identifying the most suitable use of public land under TVA stewardship. The TVA Board adopted Alternative B to provide for long-term stewardship and to fulfill TVA's responsibilities under the TVA Act of 1933. The WBRLMP will guide future decision-making and management of these reservoir properties.

**Scoping**

TVA published a notice of intent (NOI) to prepare an environmental impact statement in the **Federal Register** on February 25, 2004. To provide for better identification of issues and alternatives to be considered in the WBRLMP, a revised NOI was published in the **Federal Register** on April 18, 2004, extending the scoping comment period to June 30, 2004. After further discussion of the issues, another notice was published in the **Federal Register** on August 16, 2004, announcing a public meeting on September 28, 2004, and extending the public comment period to October 8, 2004. A total of 142 participants attended the public meeting in Harriman, Tennessee. TVA received 397 specific comments from 214 individuals and from federal, state, and local government agencies.

The majority of the public response to the NOI focused on the use of public lands for private residential and commercial development and the associated environmental impacts that could occur. Comments expressed concerns about the importance of water quality and terrestrial and aquatic ecology and questioned the need for development of public land given the success of similar projects on private land. TVA received comments that either supported or opposed land use allocations for specific land parcels, including the development of the former Clinch River Breeder Reactor (CRBR) site near Oak Ridge and the Lowe Branch site near Watts Bar Dam. TVA made an effort to identify parcels of land with sensitive resources that should be managed in a manner that ensures the protection of these resources. TVA used these comments to develop alternatives to be assessed in the 2005 draft EIS (DEIS). TVA assessed the impacts of the following alternatives: 2005 Alternative A (No Action) under which TVA would continue to use the 1988 Plan with minor updates; 2005 Alternative B (Balanced Development and Recreation) that provides a stronger emphasis on economic development and developed recreation; and 2005 Alternative C (Balanced Conservation and Recreation) that provides a stronger emphasis on natural resource conservation and informal recreation activities.

The notice of availability (NOA) of the 2005 WBRLMP and DEIS was published in the **Federal Register** on May 20, 2005, with the comment period closing on July 6, 2005. Approximately 85 people attended a public meeting on June 14, 2005, in Harriman, Tennessee, and TVA received 186 sets of comments from individuals, from federal, state, and local government agencies, and from interested organizations.

Public comments on the 2005 WBRLMP focused on opposition to using public lands for private residential and commercial development (2005 Alternative B) and the associated environmental impacts such as the loss of recreation opportunities and terrestrial habitat. Commenters provided input on the identified environmental issues: socioeconomic concerns, recreation, impacts to wildlife, and water quality on Watts Bar Reservoir. Commenters continued to question the economic need of further use of public lands for development. Those supporting 2005 Alternative B cited improved socioeconomic impacts through future commercial and economic developments.

Following the May 2005 release of the 2005 WBRLMP and DEIS, TVA instituted a moratorium on land disposal activities in order to develop a TVA Land Policy governing retention, disposal, and planning of public lands managed by the agency. The Land Policy was approved by the TVA Board in November 2006. Subsequently, the directives in the Land Policy through development of the three alternatives of the 2007 WBRLMP and amended DEIS: 2007 Alternative A (No Action), to continue to use the 1988 Plan with accrued updates; 2007 Alternative B (Modified Development and Recreation), to provide some suitable industrial use and developed recreation; and 2007 Alternative C (Modified Conservation and Recreation), to provide an emphasis on natural resource conservation and dispersed recreation activities.

The NOA for the 2007 WBRLMP and amended DEIS was published in the **Federal Register** on August 10, 2007, with the comment period closing on September 23, 2007. On August 21, 2007, 102 people attended a public meeting in Harriman, Tennessee, for the 2007 WBRLMP. There were 152 comments received from individuals; interested organizations; and federal, state, and local government agencies.

There continued to be comments opposing using public lands for private residential or commercial development, but to a lesser extent compared to the responses provided on the 2005 WBRLMP. The largest group of public comments on the 2007 amended DEIS focused on the types of use allocation for specific parcels of TVA-managed land, in particular the former CRBR site and Lowe Branch area. There were also many comments relating to the stewardship of public lands. Comments on the 2007 amended DEIS also addressed the identified environmental issues, such as water quality and wastewater discharges.

TVA reviewed and prepared responses to all of these comments. In some cases the FEIS was changed because of the information or issues presented. After considering all comments, the FEIS was completed and distributed to commenting agencies and the public. In the FEIS, TVA selected

Alternative B as the preferred alternative. An NOA was published in the **Federal Register** on February 20, 2009.

**Alternatives Considered**

TVA considered three alternatives for managing public land under its control around Watts Bar Reservoir. Under all alternatives, TVA would continue to conduct environmental reviews prior to the approval of any proposed development or activity on public land to address site-specific issues, and future activities and land uses would be guided by TVA Land Policy. TVA land use allocations are not intended to supersede deeded landrights or land ownership.

*No Action (Modified Alternative A):* TVA would continue to use the existing 1988 Plan. While the 19 allocation categories defined by the 1988 Plan would continue to be used, activities and land uses not provided for by the Land Policy would not occur. About 5,900 acres of the TVA land on Watts Bar Reservoir (Project Operations and marginal strip) would continue to be administered by TVA but would remain unplanned.

*Modified Development and Recreation (Modified Alternative B):* The proposed Modified Alternative B would continue to provide suitable economic and recreation opportunities as prescribed by the TVA Land Policy. Under this alternative, TVA would allocate public land and deeded rights into "zones," including Project Operations, Sensitive Resource Management, Natural Resource Conservation, Industrial, Developed Recreation, and Shoreline Access. Under this alternative, TVA would allocate lands to help promote some potential industrial development and commercial recreation by designating about 12 percent of the TVA-managed land available for planning on Watts Bar Reservoir for Industrial use as Zone 5 (357 acres) or Developed Recreation (1,549 acres) as Zone 6. In addition, 760 acres of the former CRBR site would be allocated to Project Operations as Zone 2. Approximately 7,525 acres (47 percent) of the land would be allocated for Sensitive and Natural Resource Management as Zone 3 or 4, allocations that also allow many dispersed recreation uses. Under this alternative, natural resource conservation and dispersed recreation predominate on reservoir lands; however, industrial development and developed recreation would occur on TVA land where those activities are most suitable and have the greatest opportunity for success. This alternative includes minor administrative changes and alterations to the boundaries of land parcels or changes to their allocation zones that reflect new information about deeded rights or natural resources.

*Modified Conservation and Recreation (Modified Alternative C):* Under Modified Alternative C, TVA would help promote conservation of natural resources and dispersed and commercial recreation by allocating about 8,766 acres of land for Sensitive Resource Management or Natural Resource Conservation and 1,350 acres for Developed Recreation (about 63 percent of TVA-managed land on Watts Bar Reservoir). Only those lands with existing industrial facilities, about 80 acres (less than 1 percent), would be allocated for Industrial use. This alternative would also include the minor administrative changes and alterations like Modified Alternative B. Under this alternative, natural resource conservation and dispersed recreation would predominate on TVA Watts Bar Reservoir land. Developed Recreation would occur on TVA land where those activities are most suitable and have the greatest opportunity for success.

In the FEIS, TVA considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federally and state-listed species, cultural resources, and wetlands would be protected.

**Responses to Comments**

TVA received comments on the FEIS from the U.S. Environmental Protection Agency (EPA), the East Tennessee Development District (ETDD), and the Tennessee State Historic Preservation Officer (TNSHPO). The U.S. Forest Service acknowledged receipt of the FEIS but offered no comments.

Although EPA found improvements in the FEIS, they continued to prefer Alternative C over the TVA preferred Alternative B. EPA believes that Alternative C is the environmentally preferred alternative, as its implementation would minimize the potential for impacts by limiting the amount of land allocation for industrial development. Regardless of the alternative selection, EPA recommended that TVA allow only industries and light commercial establishments requiring water access or supply to be located on the shorelands of Watts Bar Reservoir. EPA recommended that shoreline facilities should be monitored for water quality effects. EPA recommended that a 100-foot-buffer strip of natural vegetation and ground cover be retained between the shoreline and future developments. EPA also recommended that any public requests for residential shoreline development of TVA lands not be approved. Finally, EPA recommended that a Watts Bar Reservoir Watershed Management Plan should be developed by TVA and other prominent landowners or stakeholders in the watershed to protect reservoir water quality.

In recognition of EPA's comments, TVA will continue to emphasize water quality considerations in its land use and Section 26a decision-making processes for facilities on Watts Bar Reservoir. TVA believes that Alternative B best fits TVA's mission, which includes resource stewardship and economic development. Although natural resource conservation and dispersed recreation would predominate on the reservoir, some industrial development and developed recreation would occur on TVA-managed land suitable for those activities. As described in TVA's 2006 Land Policy, TVA will consider disposing of reservoir lands for industrial purposes or other businesses if the property is located in an existing industrial park or if the land is designated for such purposes in a reservoir land management plan. Preference will be given to businesses that require water access. TVA will consider leasing and granting easements over public lands for commercial recreation or public recreation purposes if the property is allocated for that use in a reservoir land management plan. Public lands managed by TVA will not be allocated or sold for residential or retail developments. Under TVA's Shoreline Management Policy, shoreline management buffer zones of 50 feet are established on qualifying shoreline access approvals when TVA-managed shoreline is used for private water use facilities.

In conjunction with EPA and Tennessee state agencies, TVA has developed and begun implementing a recovery plan that addresses remediation of the area affected by the ash spill at Kingston Fossil Plant. The appropriate future uses of impacted TVA-managed land and any operational recommendations will be considered after this recovery process is completed.

EPA's comment encouraging TVA to increase its stakeholder activities within the entire watershed community for the overall management of Watts Bar and other reservoirs is well taken. Water quality is a major consideration in the management of TVA reservoirs. In addition to its efforts to control pollutants via its shoreline and land use

permitting, TVA routinely has watershed water quality initiatives underway across the Valley. Additionally, TVA often plays a major role as stakeholder in overall watershed management through its participation in numerous local and regional organizations focusing on watershed and water quality issues. TVA continues to monitor water quality in its reservoirs and streams and systematically uses these data to target its management efforts.

In other agency comments, the TNSHPO concurred that applying the existing programmatic agreement for Tennessee reservoir land management plans would address the mitigation of any adverse effects resulting from implementation of the WBRLMP. Consequently, the TNSHPO had no objection to the implementation of the alternatives in the WBRLMP. TVA will prepare a program and maintenance plan for WBRLMP within two years of its adoption. ETDD found no conflicts with its plans and programs or those of other agencies.

**Decision**

On November 19, 2009, the TVA Board decided to adopt the WBRLMP as described in Alternative B, excluding the 184 acres impacted by the December 2008 coal ash spill at Kingston, Tennessee. Additionally, changes in allocation to recognize existing deeded landrights would be subject to approval by the TVA Board or its designee, pending the completion of an appropriate environmental review.

TVA believes that implementation of Alternative B not only responds to community development and recreational development needs on Watts Bar Reservoir, but also recognizes and preserves the aesthetic and sensitive resources that make the reservoir unique. Under Alternative B, TVA would set aside parcels containing sensitive resources and habitats in the Sensitive Resource Management and Natural Resource Conservation categories. For lands where TVA proposes to consider development proposals, TVA adopts commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below.

**Environmentally Preferable Alternative**

The preferred alternative is Modified Alternative B, which provides suitable opportunities for economic development and the conservation of natural resources. However, the environmentally preferred alternative is Alternative C, which has the least potential adverse impact on the environment of all the alternatives.

**Environmental Commitments**

TVA is adopting the following measures to minimize environmental impacts:

- All activities would be conducted in accordance with the stipulations defined in the programmatic agreement between TVA, the TNSHPO, and the Advisory Council on Historic Preservation.
- The construction of water use facilities and shoreline alterations within the marked limits of the safety landings and harbors would be prohibited.
- Requests for water use facilities on shoreline immediately upstream and downstream of the safety landings and harbors would continue to be reviewed to ensure that barge tows would have sufficient room to maneuver in and out of the safety landings and harbors without the risk of damaging private property.
- Because caves are extremely fragile and biologically significant, TVA has placed and would continue to maintain protective buffer zones around the known caves on TVA public land on Watts Bar Reservoir.
- As necessary and as practicable, visual buffers, between 50 feet and 100 feet wide, would be provided to screen timber harvest areas and commercial development from public thoroughfares and shorelines.
- Best management practices would be used on all soil-disturbing activities.
- Landscaping activities on developed properties would not include the use of plants listed as Rank 1, "Severe Threat," Rank 2, "Significant Threat," and Rank 3, "Lesser Threat," on the Tennessee Exotic Pest Plant Council's list of Invasive Exotic Pest Plants in Tennessee (*see* Appendix D, Table D–7 of the FEIS).
- Revegetation and erosion-control work would utilize seed mixes comprised of native species or noninvasive nonnative species (Appendix D, Table D–8 of the FEIS).
- If TVA were to develop facilities at any Zone 5 (Industrial) or Zone 2 (Project Operations) site, the following measures would be employed to minimize the potential for effects on federally listed species:

1. TVA will consult with U.S. Fish and Wildlife Service (USFWS) in order to determine if the proposed action could affect listed mussels present in the area.

2. Preconstruction mussel surveys would be conducted in all areas of the Clinch River (Watts Bar Reservoir) that would be affected by construction and use of any future terminal-associated infrastructure (e.g., barge terminal, water intakes, or water outfalls).

3. Any listed mussels found during these surveys would be dealt with according to terms and conditions imposed as a result of the USFWS consultation process. These could consist of minimization or avoidance measures implemented during construction and operation or relocation of the mussels encountered if effects are unavoidable.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be substantially reduced. Before taking actions that could result in adverse environmental effects or allowing such actions to occur on properties it controls, TVA would perform an appropriate site-specific environmental review to determine necessary mitigative measures or precautions. These protective measures represent all of the practicable measures to avoid or minimize environmental harm associated with the alternative adopted by the TVA Board.

Dated: February 1, 2010.

**Anda A. Ray,**

*Senior Vice President, Environment & Technology.*

[FR Doc. 2010–2642 Filed 2–5–10; 8:45 am]

**BILLING CODE 8120–08–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Intent To Grant an Exclusive License

**AGENCY:** Department of Veterans Affairs, Office of Research and Development.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the Department of Veterans Affairs, Office of Research and Development, intends to grant to PsychoGenics, Inc., 765 Old Saw Mill River Road, Tarrytown, NY 10591 USA, an exclusive license to practice the following patent application: U.S. Patent Application Serial No. 11/713,156 filed February 28, 2007, entitled "Pharmacological Treatment of Parkinson's Disease."

**DATES:** Comments must be received within fifteen (15) days from the date of this published Notice.

**ADDRESSES:** Send comments to: Amy E. Centanni, Director of Technology Transfer, Department of Veterans Affairs; Office of Research and

Development 810 Vermont Avenue, NW., Washington, DC 20420, Attn: 12TT Telephone: (202) 461–1702; Facsimile: (202) 254–0460; e-mail: *amy.centanni@va.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *http://www.uspto.gov.*

**SUPPLEMENTARY INFORMATION:** It is in the public interest to so license these inventions as PsychoGenics, Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published Notice, the Department of Veterans Affairs Office of Research and Development receives written evidence and argument, which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: January 26, 2010.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

[FR Doc. 2010–2604 Filed 2–5–10; 8:45 am]

**BILLING CODE P**


Federal Register

**Monday,**
**February 8, 2010**

## Part II

# Department of Agriculture

**Commodity Credit Corporation**

**7 CFR Part 1450**

**Biomass Crop Assistance Program; Proposed Rule**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1450**

**RIN 0560–AH92**

## Biomass Crop Assistance Program

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) proposes regulations to implement the new Biomass Crop Assistance Program (BCAP) authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). BCAP is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops including woody biomass in selected project areas for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility. This rule specifies the requirements for eligible participants, biomass conversion facilities, and biomass crops and materials. It also provides notice of final termination of the existing Notice of Funds Availability.

**DATES:** We will consider comments that we receive by April 9, 2010.

**ADDRESSES:** We invite you to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E–Mail: cepdmail@wdc.usda.gov.*
- *Fax:* 202–720–4619.
- *Mail:* Director of CEPD, USDA FSA CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier:* Deliver comments to Director of CEPD, Room 4709–S, 1400 Independence Ave., SW., Washington, DC.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this rule is available through the Farm Service Agency (FSA) home page at *http://www.fsa.usda.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Robert Stephenson at USDA, FSA, CEPD, STOP 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513; telephone 202–720–6221; e-mail: *cepdmail@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 9001 of the 2008 Farm Bill authorizes the Biomass Crop Assistance Program (BCAP) to assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility and to support the establishment and production of eligible crops for conversion to bioenergy in selected project areas. The 2008 Farm Bill also authorizes such sums as are necessary to carry out BCAP.

On May 5, 2009, the President issued a Presidential directive establishing a Biofuels Interagency Working Group (chaired by the Secretaries of Agriculture and Energy and the Administrator of the Environmental Protection Agency). Among other programmatic specific goals, the Presidential directive laid the groundwork for a policy development process that would aggressively accelerate the development of advanced biofuels (published in the **Federal Register** on May 7, 2009 (74 FR 21531–21532)). One aspect of the larger effort outlined in the memorandum is the issuance of guidance and support related to the collection, harvest, storage, and transportation of eligible materials for use in biomass conversion facilities—a component of the BCAP.

On June 11, 2009 (74 FR 27767–27772), we published in the **Federal Register** a BCAP notice of funds availability (NOFA) for the collection, harvest, storage, and transportation of materials (CHST). This proposed rule terminates the NOFA effective on the date the proposed rule is on public display at the Office of the Federal Register. On that date, USDA will notify the public that the NOFA is terminated and that FSA will no longer accept applications for matching payments under the NOFA.

We also held a series of public meetings, as described in a different notice published on May 13, 2009 (74 FR 22510–22511), to collect public input needed to prepare an environmental impact statement (EIS) for BCAP. As outlined in the NOFA, comments from the public meetings, other public comments previously submitted in response to the NOFA, the full EIS and all comments and lessons learned from the three BCAP notices will be incorporated into the rulemaking for the entire BCAP program, which will include CHST. As such, this proposed rule covers the whole BCAP program, including both the provisions that provide matching payments for collection, harvest, storage, and transportation of materials and the provisions that provide payment for the establishment and production of biomass crops in selected project areas. It reflects comments received on the NOFA. CCC believes that the full BCAP should be viewed in a broader policy context which promotes the Administration's priorities for increasing the production of advanced biofuels, renewable energy and biobased products. Within this context, this proposed rule, which would implement the full BCAP, terminates the NOFA and makes necessary changes to the program in a manner that is consistent with the 2008 Farm Bill and encourages the development of bioenergy, including advanced biofuels, renewable energy, and biobased products.

As defined in this rule, "advanced biofuel" means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from renewable biomass and other fuel derived from cellulosic biomass.

### Discussion of Comments on NOFA

Forty-seven comments were received in response to the NOFA. Commenters included a Tribe, State government agencies, an Embassy, individuals, non-profits, corporations, small businesses, entrepreneurs, public interest groups, Federal agencies and departments, academics, trade and industry associations, and cooperatives. Comments were received from all regions within the U.S. and from Canada and the United Kingdom.

Forty-six percent of the respondents were either a biomass conversion facility or represented biomass conversion facilities, the largest majority being from the wood pellet manufacturing industry.

Twenty-one percent of the respondents commented on the constraints that resulted from requiring an "arm's-length transaction." Most of those comments requested that the arm's-length transaction requirement either be removed or be reconstituted to enhance program flexibility and allow for a greater diversity of eligible material owner participation. CCC acknowledges the importance of ensuring a broad range of eligible materials in pursuing program goals, and is mindful of the constraints raised by the commenters. In order to provide appropriate safeguards to ensure transactions among disinterested parties, CCC proposes to replace the arm's length transaction language in the proposed rule with related-party transaction language.

Related-party transaction restrictions will not make ineligible stockholders of a privately or publicly held company who deliver eligible material to that company, nor make members of a cooperative who deliver eligible material to that cooperative ineligible. CCC requests additional comments on related-party transactions.

None of the parties in a related-party transaction for the purchase of eligible material are eligible for CHST matching payments as an eligible material owner.

Twenty percent of respondents opposed the requirement to measure biomass deliveries with real-time equipment that accurately records moisture levels to meet the dry-ton measurement standard. Most indicated that common industry practice is to measure in terms of green-tons with the general assumption of a moisture level of 45 to 50 percent. Based on these comments, CCC proposes to modify its requirement for moisture testing and adopt the industry-wide standard for measuring moisture. However, in all cases, the dry-ton equivalent remains.

Seventy-six percent of the comments concerned eligible materials, with 13 percent of those comments focused on conservation and forest stewardship plans related to eligible materials. These comments included commentary for and against the 20 percent cap on Title I crop agricultural residue. Most of those in favor of the cap remarked that it ought to be a complete ban to protect soils from wind and water erosion and that no agricultural residue should be removed without a conservation plan. Many of those in opposition to the cap stated that the cap of 20 percent only would drive up market prices on forest residue and allow forest residue to become the central supply for biomass conversion facilities. In this proposed rule, there is no 20-percent cap because it is inconsistent with the 2008 Farm Bill. Regarding protecting land from wind and water, CCC proposes in this rule that BCAP contract participants will implement conservation plans, forest stewardship plans or equivalent plans that take into account site-level conservation needs. With regard to matching payment eligibility for agricultural and forest landowners and operators removing eligible material for use in a biomass conversion facility, such removal to receive matching payments must be done in compliance with any new, updated or existing conservation plans, forest stewardship plans or equivalent plans, as well as any existing environmental laws and regulations.

Other comments concerning the conservation plans included a desire to expand the requirement for conservation plans. Suggestions for elements of conservation plans included: target erosion rates far below "T" (soil loss tolerance) and compliance with new State ordinances on items such as buffers. This standard exceeds the level for highly erodible land, which is defined in 7 CFR part 12. Therefore, CCC did not adopt this comment and requests public comment on appropriate conservation standards for land enrolled in BCAP.

Comments concerning Forest Stewardship Plans offered alternative "equivalent plans" prescribed in the 2008 Farm Bill, such as plans under the American Tree Farm Program, the Sustainable Forestry Initiatives Program or State Best Management Programs. This comment is consistent with the 2008 Farm Bill and was accepted and reflected in this proposed rule.

Less than 10 percent of the comments urged FSA and CCC to consider miscanthus as an eligible material. Miscanthus is an eligible material; however, because some States may consider miscanthus a noxious weed, it may not be considered an eligible crop in those States.

Nearly 50 percent of the comments expressed a need for the eligibility time period for matching payments to be extended beyond two years. Rationale for these requests included the fact that certain contracts, such as a timber sale contract, have task orders and options that are not necessarily executed within a two-year time period and the need for equipment acquisitions or repairs sometimes interrupt harvesting. Two suggestions were given to tie the two-year limit to land tract instead of the eligible material owner.

The 2008 Farm Bill specified the two-year period for matching payments. However, CCC modified the beginning of the time period from the date of pre-delivery approval to the date the first payment is issued. From that first date, matching payment obligations may occur for two years to an eligible material owner. CCC did not adopt the comment to change the two-year period from "eligible material owner" to "tract" because to do so would have been an extraordinary administrative burden on FSA that would have required extensive geographic-information-system-based software to monitor and control payments.

Nearly 20 percent of the commenting respondents were concerned with the economic market impact of BCAP. Comments included concerns that the introduction of the matching payment could impact the supply of commercial timber. Commenters did not agree on the impact; concerns were expressed that the impact would be negative, reducing supply, and positive, increasing supply. Similarly, commenters expressed concern that supply impacts would result in both favorable and unfavorable pricing impacts. Several respondents noted that the drop in the housing market has depressed the current supply of biomass and the matching payment, from their perspective, might help improve waste wood supply levels. Because these comments are of a general nature, CCC took no action on these comments.

Nearly 25 percent of the comments opposed the requirement to present scale tickets or a check to qualify the delivery and validate eligibility for a matching payment. The commenting parties indicated that the burden and cost of recording on each scale ticket was too high. CCC generally agrees with the comment and modified the requirement in § 1450.104(f) so the required information that must be submitted includes total actual tonnage delivered, total dry-weight tonnage-equivalent using standard moisture determinations, total payment including per ton payment rate(s) matched with actual tonnage, and the qualified biomass conversion facility's certification as to the authenticity of the information.

Comments on wildlife and plant life came from 15 percent of the respondents. Several comments indicated concern about ensuring standards for invasive and noxious species where eligible material was concerned. These comments suggested that CCC consult with USDA's Animal and Plant Health Inspection Service and the National Council for Invasive Species to address geographic-specific issues. "Eligible material" is a subset of renewable biomass and is specifically defined in the 2008 Farm Bill as the

material that is eligible for a matching payment. The 2008 Farm Bill does not restrict invasive and noxious species from eligibility, however, as discussed below, CCC will require that existing measures be taken and standing guidelines followed for any harvesting, collecting, storing or transporting of such material from such species.

"Eligible crops," however, are another subset of renewable biomass that refers to the kind and types of crops that may qualify for establishment and annual payments on land enrolled in BCAP. According to the 2008 Farm Bill, invasive and noxious species are not "eligible crops" and CCC will collaborate with other appropriate agencies and entities to ensure current listings are available.

Finally, in issuing the NOFA, we pledged to consider all public comments and incorporate relevant evidence from the full EIS as well as all lessons learned into the proposed rule that sets forth requirements for the overall BCAP. Based upon the Department's experience in implementing the component of the program authorized by the NOFA, certain changes are necessary to implement the program in a manner that is consistent with the 2008 Farm Bill, while also supporting the Administration's overall policy objective to encourage the development of advanced biofuels, renewable energy, and biobased products within the 2008 Farm Bill authority. The proposed rule will specifically seek public comment on how to best incentivize the development of advanced biofuels, renewable energy and biobased products from renewable biomass.

**BCAP Overview**

BCAP supports two main types of activities. First, it provides funding for agricultural and forest land owners and operators to receive matching payments for eligible material that is sold to qualified biomass conversion facilities for the production of heat, power, biobased products, or advanced biofuels. In this rule, these payments are referred to as "matching payments." The matching payment is intended to assist producers with the cost of collection, harvest, storage, and transportation of eligible material to the facility. Such payments to a particular participant may continue for up to two years after the first payment is issued. Second, BCAP provides funding for producers of eligible crops of renewable biomass within specified project areas to receive establishment payments of not more than 75 percent of the cost of establishment of eligible woody and non-woody perennial crops, and annual payments for up to 15 years for the production of those crops. In this rule, these are referred to as "establishment and annual payments." To be eligible for payment, the establishment and production activities must take place in designated project areas, which may be proposed to CCC by biomass conversion facilities or by groups of producers. Production activities may include, but are not limited to, annual payments for producers who are unable to sell crop due to a reduction in the size or scope of a biomass conversion facility's operation or if a producer experiences crop failure caused by no fault of the producer but by a natural event such as drought, flooding or hail, as determined by CCC. Producers in project areas can be eligible for both types of payments; producers outside the project areas can be eligible for matching payments only. A table summarizing the major eligibility requirements for both types of payments is provided later in this rule.

**Terms Used in This Rule**

This rule uses the term "eligible material" for the renewable biomass that is eligible for the matching payment component of BCAP and "eligible crop" for renewable biomass that may be eligible for the establishment and annual payments component of BCAP. The 2008 Farm Bill uses these two terms in this way and defines them as including different kinds of renewable biomass. The use of the terms in this rule is consistent with the way the terms are used in the 2008 Farm Bill. With this rule, CCC intends to achieve better consistency between the requirements for eligible materials collected and harvested from public and private lands. In addition, CCC seeks to avoid diverting any materials potentially eligible for BCAP matching payments from existing value added production processes already occurring in the marketplace. Therefore, CCC proposes that vegetative wastes, such as wood waste and wood residues, collected or harvested from both public and private lands should be limited to only those that would not otherwise be used for a higher-value product. More specifically, for materials collected from both public and private lands, CCC is proposing to exclude from matching payment eligibility wood wastes and residues derived from mill residues (*i.e.* tailings, *etc.*) or other production processes that create residual byproducts that are typically used as inputs for higher value-added production (*i.e.* particle board, fiberboard, plywood, or other wood product markets). However, CCC is proposing to allow as eligible for matching payments wood waste and residue derived from slash, pre-commercial operations, wet cordwood *etc.*) that is altered to chipped or similar form solely for the purposes of transport and delivery to eligible biomass conversion facilities. As specified in the 2008 Farm Bill and the regulations in 7 CFR part 1450, the eligible material owner may be a person or legal entity who is (1) a producer of an eligible crop or (2) has the right to collect or harvest eligible material and (3) a qualified biomass conversion facility that meets those requirements and the definition. As discussed in this rule, the matching payments will be made for the delivery of the eligible material.

The term "conservation district" is used as defined in 7 CFR part 1410.

This proposed rule uses the term "participant" for the matching payments component of BCAP and the terms "producer" and "participant" for the establishment and annual payments component of BCAP. The distinction is, an eligible participant for matching payments is not necessarily the person or legal entity who produced the material, but may be the person who owns it or has the authority to sell it to the biomass conversion facility. In other words, all BCAP producers are participants, but not all BCAP participants are producers. Participants are those individuals or entities who have been approved and are bound to perform under a contract for matching payments, establishment, or annual payments.

This proposed rule uses the term "contract" and "agreement." A contract is between CCC and the participant for BCAP payments. The contract is legally binding and specifies what the producer must do and the resulting payments that CCC will make to the producer. An agreement is with a qualified biomass conversion facility or a project area sponsor. As fully described later in this proposed rule, the agreement specifies what the qualified biomass conversion facility or the project area sponsor plans to do and how it will support the establishment and production of eligible crops for conversion to bioenergy in the BCAP project areas, for example, the type of renewable biomass that will be used, the planned use of renewable biomass, and the new uses for the renewable biomass. In addition, there may be agreements between CCC and a qualified biomass conversion facility for the matching payments, which include items such as obligations of the facility to provide a purchase list, receipts and scale tickets for the eligible material owners and agreement to provide

facility address and contact information to the general public.

**Matching Payments**

As proposed in this rule, matching payments would be available for the delivery of eligible material to qualified biomass conversion facilities to a producer of an eligible crop or a person with the right to collect or harvest eligible material.

The 2008 Farm Bill provides for matching payments at a rate of $1 for each $1 per dry ton paid by the qualified biomass conversion facility, in an amount up to $45 per dry ton, for a period of two years. The 2008 Farm Bill also provides that biomass conversion facilities are those that convert, or propose to convert renewable biomass into heat, power biobased products, or advanced biofuels.

For the matching payments to eligible material owners delivering to a biomass conversion facility, CCC seeks comments on the following three options.

One option is to provide the matching payments as provided in the Notice of Funds Availability. Under this option, CCC would provide matching payments at the rate of $1 for each $1 per dry ton paid by the CHST-qualified biomass conversion facility to the owner for delivery of eligible material to the facility in an amount not to exceed $45 per dry ton. Under this option, a limit would be placed on those biomass facilities that convert wood wastes or wood residues into heat or power for the facility. In those cases, a historical baseline of heat or power the facility produces from these materials will be established by the Deputy Administrator and payments will be made only for materials delivered to those facilities for conversion to heat or power above that baseline.

A second option is to tailor the matching payments through a "tiered approach" designed to encourage advanced biofuels production. In this option, CCC would provide matching payments at the rate of $1 for each $1 per dry ton paid by the CHST-qualified biomass conversion facility; however, biomass conversion facilities converting eligible material to advanced biofuels would be able to receive matching payments at the maximum rate of $45 per ton. Biomass conversion facilities converting eligible material to any use other than advanced biofuel—such as heat, power, renewable energy or biobased products—would be able to receive payments at some point below the maximum rate. USDA requests comments on how to assess a tiered approach and how such an approach might be structured.

One possible approach would be based on USDA's tentative finding, in Regulatory Impact Analysis, that a $9 per green ton subsidy would render biomass feedstock broadly appealing to farm operators and competitive as an input to the energy sector. This $9 per green ton rate equates to approximately $15 to $16 per dry ton. If so, a $16 per dry ton payment rate would be sufficient to incentivize the production of new biofuel feedstock development and associated production processes that would not otherwise occur absent this financial support.

Another approach would be to develop a payment rate based directly on the value of lowering carbon emissions. Such an approach would take account of the greenhouse gas benefits associated with the substitution of biofuels for other more carbon intensive fuel sources, such as coal. USDA has proposed a particular minimum subsidy of $16 per dry ton, and it believes that value may "internalize" some of the societal benefit of the use of biofuel feedstock as an energy sector input, leading to significant environmental improvements. USDA specifically requests comment on how to better capture this concept and whether a higher or lower minimum payment may best reflect the greenhouse gas and other environmental benefits of biofuel feedstock energy use.

USDA specifically requests comment on whether this or another similar payment structure might be best, and on how USDA may reflect the economic and environmental goals that can be achieved through this kind of tiered payment structure.

Finally, a third option is to vary the matching payments to encourage additional biomass production beyond a historical baseline. Under this option, CCC would calculate the matching payment at the rate of $1 for each $1 per dry ton paid by the CHST-qualified biomass conversion facility and then reduce the actual amount paid based on the difference from the baseline. For example, full payment could be provided for delivery of eligible material to new facilities, certain public buildings, facilities, or property (such as schools, universities, military facilities or Federal and State buildings) that convert from fossil fuel consumption to renewable biomass feedstocks; for eligible material showing exceptional promise for producing innovative advanced biofuels, renewable energy, or biobased products; or for every ton of renewable biomass consumption above a facility's established baseline. Payments would be reduced for those facilities that do not increase renewable biomass consumption over a historical baseline.

While CCC has not formally considered all of these options, CCC seeks comments and suggestions on all three of these options for the final rule so as to achieve an expansion and strengthening of the production of advanced biofuels, renewable energy, and biobased products from non-feed renewable biomass.

**Qualified Biomass Conversion Facility**

CCC proposes that in order for a delivery of eligible materials to a biomass conversion facility to be eligible for payment, the receiving biomass conversion facility would first have to become qualified for BCAP. To become qualified, the eligible biomass conversion facility would enter into an agreement with CCC, through the FSA State office in the State where the facility is physically located.

A biomass conversion facility, as specified in the 2008 Farm Bill and in this proposed rule, would be a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, advanced biodiesel, or advanced biofuels such as wood pellets, grass pellets, wood chips, or briquettes. For the purposes of BCAP, advanced biofuels do not include ethanol derived from corn kernel starch, because the 2008 Farm Bill specifically excludes it in the definition.

A biomass conversion facility would not have to be a project sponsor for the establishment and annual payments component of BCAP or be in operation to submit a successful application for qualification. If the facility is not yet in operation, CCC proposes that the person requesting that a facility become qualified must provide proof of all applicable Federal, State, local, and Tribal permits and licenses required for operation or proof of application completions or letters of renewal submissions from the applicable governmental entity. Applicable permits and licenses may include, but are not limited to, business licenses, air quality permits, water discharge permits, storm water permits, or Bureau of Alcohol, Tobacco, Firearms and Explosives registrations.

CCC proposes that each biomass conversion facility enter into a separate agreement with CCC regardless of whether a single owner has multiple facilities. CCC would issue unique facility identification numbers to each qualifying biomass conversion facility.

The proposed agreement between CCC and a qualified facility would require the biomass conversion facility to make information about the facility available to CCC and institutions of higher education. The 2008 Farm Bill requires that the information be made available to the Secretary or to institutions of higher education so that the information can be used to promote the production of biomass crops and the development of biomass conversion technology. The 2008 Farm Bill also requires a report to Congress on best practice data and other information no later than four years after the enactment of the 2008 Farm Bill, so the agreement would require that such information be disclosed, with the understanding that such information would be used in the report to Congress. In addition, when a biomass conversion facility agrees to become "qualified" it will be helpful for CCC to make information available to the public that a particular facility has become qualified because it is a precursor to being eligible for a matching payment.

**Eligible Material Owners, Application for Matching Payments**

To be eligible for matching payments, the eligible material owners need to visit a county FSA office to sign up for payment approval as an eligible material owner. The qualified biomass conversion facility would issue a receipt or invoice upon the date of delivery to eligible material owners.

The material owner would be eligible for the payment if the owner had the legal title to the material for collection or harvest, such as the operator or producer conducting farming operations on private land, or any other person designated by the owner of the private land. Consistent with the 2008 Farm Bill, the eligible material owner could be a person(s) with the right to harvest or collect eligible material on certain Federal lands pursuant to a contract or permit with the United States Forest Service or Bureau of Land Management, such as a timber sale contract.

Eligible material owners would take the receipts from the qualified biomass conversion facility and submit them to the county FSA office for matching payments. In accordance with the 2008 Farm Bill, CCC proposes that the measure for the eligible material weight would be a "dry ton," the weight at zero percent moisture content. The facility would be required to have the necessary equipment (such as a moisture meter) to calculate the equivalent dry ton weight of the delivered material.

In addition to weight scaling for roundwood and forest residues that have not been chipped, CCC proposes in consultation with the U.S. Forest Service to require qualified biomass conversion facilities to use a random sampling methodology and historical statistical data to determine conversion factors for eligible material. Conversion factors would need to be developed quarterly and be based on type of material such as hardwood and softwood.

For wood chips, chipped forest residuals, shavings, sawdust, bark or any other eligible intermediate forestry residuals, CCC in consultation with the U.S. Forest Service proposes the requirement of sampling for individual loads or using rapid electronic meters. Quarterly correction factors would be required and be based on monthly random samples of the eligible materials.

CCC proposes that woody biomass sampling methodologies follow standard probability sampling of materials and proposes that moisture analysis follow standard test methods for wood fuels.

An eligible owner is able to receive matching payments for a period of two years. The two-year period for matching payment eligibility would begin on the date of issue of the first matching payment. This provision differs from what was provided in the NOFA, which indicated that the 2-year time period would begin immediately after initial approval by the FSA county office for the CHST matching payment and would end 24 months later. Having the "start date" coincide with the payment date, rather than the approval date, ensures that participants would not be unnecessarily penalized if, through no fault of their own, for example, adverse weather or other conditions could delay delivery of eligible material to a qualified biomass conversion facility.

Eligible material owners may also be eligible to participate under the "Establishment and Annual Payments" component of BCAP; however, the annual payment that is received by a participant in that component would be reduced when a matching payment was issued. The "Establishment and Annual Payments" component is discussed later in this rule. If an eligible material owner or producer wishes to avoid the reduction in annual payment(s), CCC proposes that the owner or producer do so by declining the matching payment(s).

The NOFA imposed an "arm's length transaction" requirement to be eligible for a matching payment. CCC acknowledges the importance of maintaining flexibility in this new program, as well as ensuring a broad range of eligible materials in pursuing program goals, and is mindful of the constraints raised by the comments. In order to provide appropriate safeguards to ensure transactions among disinterested parties, CCC proposes to replace the "arm's length transaction" language with related-party transaction language. Related-party transaction restrictions will not render stockholders of a privately or publicly held company who deliver eligible material to that company ineligible; nor will members of a cooperative who deliver eligible material to that cooperative be considered ineligible. CCC proposes that related-party transaction be defined as a transaction between two or more ready, willing, and able organizations, trades, or business (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) substantially owned or controlled, directly or indirectly by the same interests, as determined by the Deputy Administrator.

As otherwise explained throughout this proposed rule, CCC proposes that an eligible material owner needs to meet the following to be eligible for a matching payment:

An eligible material owner may be:

- A producer within a project area;
- A biomass conversion facility;
- A person or entity with the legal title to an intermediate ingredient or feedstock; or
- A person or a non-Federal entity that has legal title to an eligible material, including Indian Tribes and Tribal members.

An eligible material owner may apply for a matching payment at the FSA county office after delivery of eligible material to a qualified biomass conversion facility.

The eligible material must be harvested or collected from certain:

- U.S. National Forest System and BLM lands,
- Non-Federal lands, including State- and locally-held government lands, or
- Tribal land held in trust by the Federal government.

The eligible material must be harvested or collected from certain:

- Materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Bureau of Land Management System land that:
- Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;
- Would not otherwise be used for higher-value products; and
- Are harvested in accordance with applicable law and land management

plans and the requirements for old-growth maintenance, restoration, and management direction of section 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f).

- Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:
- Renewable plant materials such as feed grains, other agricultural commodities, and other plants and trees; and
- Waste materials including vegetative waste comprised of crop residues such as corn stover or wood wastes and wood residues that would not otherwise be used as inputs for existing value-added production.

CCC also proposes that eligible material owner(s) would not be eligible for a matching payment if:

- Payment is received before the biomass conversion facility is qualified by CCC;
- The eligible material owner did not receive approval for matching payment from the county FSA office before receiving payment;
- The delivery did not consist of eligible material (For deliveries of comingled eligible and ineligible material, only the eligible material will be eligible for payment);
- The eligible material owner knowingly supplied false information;
- The eligible material owner violated the associated conservation or forestry plan related to the land that produced the eligible material for which a matching payment is requested; or
- The formerly qualified biomass conversion facility failed to comply with the agreement it entered into with CCC and, accordingly, the agreement was terminated by CCC prior to delivery.

Comments received on the CHST NOFA encourage CCC to ensure that conservation or forest stewardship plans appropriately address soil, water, wildlife and other natural resource concerns, so that biomass production is balanced with natural resource conservation. For matching payments, CCC intends to apply existing conservation plan requirements as required by Title XII of the Food Security Act of 1985 and is requesting additional comments in this proposed rule to ensure that adequate guidance is received to determine the scope of these requirements. CCC invites further comment on specific, additional conservation and stewardship measures that could be included or that could be contained within the matching payment options discussed previously.

**Eligible Materials**

For guidance to potential eligible material owners and biomass conversion facilities, CCC proposes to provide a list of eligible materials deemed acceptable to receive a matching payment in accordance with the 2008 Farm Bill's definitions of renewable biomass and eligible material. The list of eligible material would be provided to the public via the FSA Web site at *http://www.fsa.usda.gov/energy.* CCC proposes the list of materials be utilized for guidance with the understanding that the list is not exhaustive and would be amendable and periodically updated by the CCC—in accordance with the parameters established by the 2008 Farm Bill—as biomass energy technology evolves. When there is recommendation for an addition to the list of eligible material, CCC will review the material to make determinations—the review could include a site visit and comparison to related materials or uses. CCC will review the recommendation to ensure that the new material meets the requirements of the 2008 Farm Bill and the regulations. CCC requests comments for additional suggestions on considerations in the process to amend the list of eligible materials. As described later in this rule, a list of eligible crops for the establishment and annual payment provisions would include some additional crops not eligible for matching payments.

Renewable biomass, as specified in the 2008 Farm Bill and in this rule, includes materials, pre-commercial thinnings, or invasive species from U.S. National Forest System land and U.S. Bureau of Land Management (BLM) land that:

- Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;
- Would not otherwise be used for higher-value products; and
- Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of subsections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention provisions of subsection (f).

In other words, renewable biomass harvested on National Forest System and BLM land would typically be trees and brush removed for fire prevention purposes, trees unsuitable for commercial timber harvest, invasive plant removal for treatment and control purposes, and diseased, damaged, or immature trees culled in accordance with appropriate forest management practices. Additionally, CCC seeks comment on additional conservation or stewardship measures that should be considered for inclusion in the final rule for the eligible materials described above.

As specified in the 2008 Farm Bill, renewable biomass also includes any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States including:

- Renewable plant materials such as feed grains, other agricultural commodities, other plants and trees, and algae;
- Waste materials including vegetative waste comprised of crop residues such as corn stover, wood wastes, and wood residues;
- Animal waste and byproducts; and
- Food waste and yard waste.

However, that definition of renewable biomass from the 2008 Farm Bill applies to more than one program in Title IX. For BCAP specifically, the 2008 Farm Bill defines "eligible material" more narrowly, so that renewable biomass excludes the whole grain derived from any crop that is eligible to receive payments under Title I of the 2008 Farm Bill.

Those crops that are subject to the provisions of Title I of the 2008 Farm Bill would therefore not be included as eligible materials or crops for either component of BCAP. These crops include the whole grain derived from a crop of barley, corn, grain sorghum, oats, rice, and wheat; oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts, pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and, cotton boll fiber.

In accordance with the 2008 Farm Bill, CCC proposes that crop residue or other similar byproducts of crop production and harvesting, such as corn stover, corn silage, straw, hulls, or sugar bagasse, remain eligible materials for matching payments without further limitation or restriction. CCC proposes that for such eligible material conservation plans should be updated or initiated to address the removal of the material as needed. Additionally, CCC invites comments and suggestions with regard to specific, additional conservation and stewardship measures

that should be considered for the collection, harvest, transportation or storage of these eligible materials.

The 2008 Farm Bill is silent as to whether, for the purposes of BCAP matching payment eligible material requirements, vegetative waste materials, such as wood waste and wood residue, available from non-Federal land should be limited only to those that would not otherwise be used for higher-value products. Based on its experience with the NOFA, CCC proposes in this rule to apply that limitation to vegetative waste materials such as wood wastes and residues so that those materials are excluded if they would otherwise be used for higher-value products. CCC invites comments and suggestions with regard to the addition of this provision.

The 2008 Farm Bill does not specifically exclude invasive or noxious species in the definition of "eligible material." Renewable biomass derived from invasive or noxious species must be handled in accordance with Executive Order (E.O.) 13112 of February 3, 1999. E.O. 13122 requires that Federal agencies "not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions."

CCC consulted with APHIS and the National Invasive Species Council experts to determine the feasible and prudent measures necessary to minimize the risk of harm related to the inclusion of invasive or noxious species for the purposes of BCAP matching payments. Based on the consultation, CCC proposes to include invasive and noxious species as eligible materials for BCAP matching payment purposes; however, such eligible materials must not be collected, harvested, or transported during reproductive or other phases that may propagate the spread or establishment of those species. Eligible material owners should contact State and local weed boards or authorities and their local USDA Service Center staff about collecting, harvesting, or transporting invasive or noxious species to ensure compliance with E.O. 13112, USDA guidelines, and other requirements.

The likely benefits of including invasive and noxious species as eligible materials, which would incentivize their removal, significantly outweighs the potential negative impacts that may result from not including them as eligible materials, specifically scenarios where removing native species from a tract of land would occur and not removing the invasive or noxious species would encourage invasive and noxious species propagation.

CCC requests comment on whether or not eligible material owners violating E.O. 13112 should be financially responsible for any or all removal costs associated with the spread or establishment of invasive or noxious species if it determined that an eligible material owner contributed to the spread or establishment of an invasive or noxious species while carrying out activities related to receiving a matching payment.

As required by the 2008 Farm Bill, the following renewable biomass materials would also be excluded from BCAP matching payments, although they would be eligible crops for BCAP establishment and annual payments:

- Animal waste and byproducts (including fats, oils, greases, and manure);
- Food waste such as food processing scraps and yard waste such as debris removal originating from municipal or commercial yard, lawns, landscaped areas or related sites; and
- Algae.

Additionally, CCC proposes that materials that are wastes or by-products of industrial or similar processes that contain inorganic materials, such as black or pulp liquor that is a by-product of the pulp and kraft paper manufacturing process, remain excluded from the definition eligible materials. While such products may have historically been used to generate heat, power, steam and electricity to operate facilities, these products are not within the parameters set by the 2008 Farm Bill because they are, among other things, not organic materials collected or harvested from land. As such, these materials, as well as otherwise eligible materials delivered and used for the generation or production of these materials, would continue to not be eligible for matching payments under this program.

Consistent with the 2008 Farm Bill, CCC proposes that eligible materials, for a matching payment, would be collected and harvested from eligible lands that would include:

(1) U.S. National Forest System lands;

(2) BLM lands;

(3) All Non-Federal lands in the United States; and

(4) Land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States. In other words, most publicly- and privately-held land is eligible for the BCAP matching payments program, except for some Federal lands.

In accordance with the 2008 Farm Bill, CCC proposes that matching payments would be made for all eligible materials, including those derived outside BCAP project areas. CCC invites comments pertaining to the previously discussed options for structuring matching payments to provide incentives for the collection, harvest, storage and transportation of eligible materials near project areas.

Eligible materials that are considered an advanced biofuel or an intermediate ingredient or feedstock of a biobased product must be derived from an otherwise eligible material.

CCC recognizes that the production of some advanced biofuels and biobased products requires intermediate ingredients and intermediate feedstocks, such as chopped grasses or wood chips. CCC proposes that the source material and the intermediate ingredient or feedstock be considered separate eligible materials; however, only one matching payment will be issued for either the source material or the intermediate ingredient or feedstock, but not both.

**Eligibility for Establishment and Annual Payments**

Establishment and annual payments are proposed to be available for persons and legal entities with eligible land that is located within a project area designated by CCC. CCC proposes to accept project area proposals from a project sponsor on a continuous basis. Unlike the matching payments component of BCAP, where any owner of eligible materials can be eligible for the program, for the establishment and annual payments component, only producers in a designated project area will be eligible for payment. The payments will cover not more than 75 percent of costs of eligible practices to establish non-woody and woody perennial biomass crops, and annual payments to support up to 15 years of crop production. By designating project areas, the BCAP program can support the development of renewable biomass production near biomass production facilities.

**Proposing Project Areas**

Project areas would be proposed by project sponsors, which could be either groups of producers or biomass conversion facilities.

There is no restriction in this proposed rule on who can own or operate an eligible facility, or sponsor a project area. Various parties could own a biomass conversion facility such as Federal entities, private entities, State or local government agencies, schools, or non-government organizations, provided that these parties have legal title to the facility.

CCC proposes to accept project area proposals on a continuous basis. In accordance with the 2008 Farm Bill, a complete proposal would include, at a minimum:

(1) A description of the eligible land and eligible crops of each producer that will participate in the proposed project area;

(2) A letter of commitment from a biomass conversion facility stating that the facility will use eligible crops intended to be produced in the proposed project area; and

(3) Evidence that the biomass conversion facility has sufficient equity available to operate in the future if the facility is not operational at the time the project area proposal is submitted.

While the 2008 Farm Bill does not require conservation plans or forest stewardship plans to be an acceptable proposal, it does require that all contracts within a project area provide for the implementation of a conservation plan, forest stewardship plan or equivalent plan. As such, project area proposals will also include a description of the general conservation and forest stewardship measures that will be implemented in plans under contracts within the area. CCC seeks specific comment as to further conservation or stewardship requirements that should be included in a proposal for a project area.

For item 1 above, the project sponsor would submit a narrative of the proposed project and submit maps of the project area delineating the location of the current or proposed biomass conversion facility. The maps would show: (1) Current land use, (2) roads, (3) railroad, (4) rivers and barge access, (5) proposed land use change, and (6) resource inventory maps including soils and vegetation.

For item 3 above, evidence of sufficient equity will document the projected construction, start-up, operation, and maintenance costs over the projected life-span of the project. The project sponsors would document the estimated cash-flow of the project during its life-span (including assumptions on the production outputs and expected market prices for the products produced). In addition, the project sponsor would document its existing resources and short term and long term financing. The information provided to CCC will be confidential and CCC will use it to determine if sufficient equity is available for the facility and the project.

The project sponsor will also submit the economic impacts of the proposed project area. At a minimum the proposal will address the anticipated timing and number for job creation and retention and likelihood of attracting additional private sector investment.

At a minimum, projects must demonstrate the ability to support the development and production of heat, power, biobased product, or advanced biofuels from renewable biomass production. The facility must demonstrate long-term economic viability and ability to comply with all environmental and regulatory requirements for the production of heat, power, biobased product, or advanced biofuels from renewable biomass. In addition, the project must demonstrate that sufficient quantity of eligible crops will be grown within an economically viable distance from the facility and that the crops can be grown in an environmentally acceptable manner as determined by CCC.

CCC requests comments on other types of information that should be required from project sponsors, including, but not limited, to a draft proposal. Proposed project area information that a sponsor considers appropriate or sufficient, may be included in a comment to this rule. We will review the information and use the analysis to make any required changes in the final rule. Information submitted as a proposal for a project area cannot be approved until implementation of the final rule. As with any comment, proposed project area information will become part of the public record and the public will be able to review it and comment on it. Because BCAP is a new program, information based on specific examples, projects, and situations will help improve the implementation and effectiveness of the program.

CCC proposes that a project area have specific geographic boundaries and be described in definite terms such as acres, watershed boundaries, mapped longitude and latitude coordinates, or counties. The project area would be physically located near a biomass conversion facility or facilities. Whether a project area is within an economically viable distance from a biomass conversion facility will depend upon the eligible crops being established and produced, as well as other transportation and logistics matters, and thus must necessarily be determined on a case-by-case basis. The biomass conversion facility can be within the geographic boundary of the project area, or near it. The project area must also include potential or established producers that would supply either a portion or all of the renewable biomass needed by the biomass conversion facility.

**Project Area Selection Criteria**

Consistent with the 2008 Farm Bill, CCC proposes to evaluate project area proposals that are submitted, according to these criteria:

(1) The volume of the eligible crops proposed to be produced in the proposed project area and the probability that such crops will be used for BCAP purposes;

(2) The volume of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(3) The anticipated economic impact in the proposed project area, such as the number of jobs created and retained;

(4) The opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed project area;

(5) The participation rate by beginning or socially disadvantaged farmers or ranchers;

(6) The impact on soil, water, and related resources, such as effect on nutrient loads, or soil erosion;

(7) The variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices; and monoculture and polyculture crop mixes; and

(8) The range of eligible crops among project areas.

CCC proposes that all project proposals meeting these criteria would be considered acceptable for BCAP. The 2008 Farm Bill provides discretion for the Secretary to consider other information in evaluating project proposals. Given this discretion, CCC proposes that, in addition to the above criteria, proposals will also be evaluated based upon their ability to promote the cultivation of perennial bioenergy crops and annual bioenergy crops that show exceptional promise for producing highly energy-efficient renewable energy, advanced biofuels or biobased products, that preserve natural resources, and that are not primarily grown for food or animal feed. CCC

requests comments on whether additional criteria should be included for evaluating the capacity of the land in a project area to sustainably produce the proposed quantity of biomass. CCC requests comments on what other criteria or information we should use to evaluate project proposals.

Project sponsors that are biomass conversion facilities could be any size of operation including pilot facilities, research units, experimental or demonstration operations, or commercial operations. As proposed in this rule, a biomass conversion facility not yet in operation could be a project sponsor. In that case, the biomass conversion facility would have to provide evidence that it has sufficient equity available.

**Project Area Eligible Crops**

As proposed in this rule, after CCC approves a project area, persons and legal entities within the specific geographic boundaries of that area could be eligible for payment for the establishment and production of eligible crops. To be eligible for payment, participants would need to enroll the land under BCAP contracts.

The 2008 Farm Bill defines an eligible crop as a crop of renewable biomass. The 2008 Farm Bill also includes a list of certain types of renewable biomass that are ineligible. Animal wastes, food and yard wastes, and algae are included in the definition of eligible crop in the 2008 Farm Bill and are therefore included in the definition in this proposed rule.

CCC proposes that biomass conversion facilities may suggest the exact species and varieties of eligible crops allowable in a BCAP project area, provided that the crops are included in the BCAP definition of eligible crop. Project area proposals may limit the nature and types of eligible crops to be planted within a project area.

The 2008 Farm Bill specifically excludes Title 1 crops and noxious or invasive plants as eligible crops. FSA State Committees will consult with the State Technical Committees for recommendations concerning the invasive and noxious status for otherwise eligible crops for the purposes of BCAP.

As specified in the 2008 Farm Bill, Federal or State-owned lands are not considered to be eligible lands for establishment and annual payments; therefore, CCC proposes to exclude all Federal and State-owned land from the establishment and annual payments component of BCAP.

**Project Area Eligible Producers**

CCC proposes that within the project area, producers would enter into BCAP contracts and be eligible to receive establishment payments, as a form of cost-share, to convert agricultural lands or nonindustrial private forest lands to the production of eligible crops. In addition, producers could also be eligible for annual payments for the production of eligible crops used for conversion to renewable energy, advanced biofuels or biobased products. The details for what is required to qualify for the annual payments would be specified in the individual contract between CCC and a producer, as discussed further below, and would include provisions for the implementation of a conservation plan, forest stewardship plan, or equivalent plan, where required. The producer will demonstrate compliance with the conservation or forest stewardship plan through required self certification and FSA will ensure that normal spot check rules and methods are followed to ensure compliance with the plans. Producers that already have established BCAP eligible crops when this program starts may enter into a contract for annual payments to continue growing those crops; however, establishment payments would not be authorized.

CCC also proposes that project sponsors, regardless of whether they are a biomass conversion facility or a group of producers, could also be considered as a producer and be eligible to receive establishment and annual payments. However, the sponsor would have to own or operate eligible land to be eligible to enroll as a producer under a BCAP contract and be eligible to receive establishment and annual payments. State-owned biomass conversion facilities would not be eligible to be considered a producer for a BCAP contract because the 2008 Farm Bill specifies that State-owned land is ineligible for establishment and annual payments.

The agreement between the project sponsor and CCC is not a contract. A successful project sponsor is not paid by CCC for being a sponsor; the producers in the project area, who may also be the sponsor, are eligible for payment for the establishment and production of eligible crops. Therefore, biomass conversion facilities that act as project sponsors would not be subject to general Federal contracting requirements as a condition of a project area approval.

**Project Area Contract Acreage and Terms**

CCC proposes that a producer within the project area would enter into a contract with CCC to commit acres, which would then be called contract acreage, to establish or produce eligible crops.

In accordance with the 2008 Farm Bill, CCC proposes that contract terms include:

(1) Compliance with highly erodible and wetland conservation requirements contained in the 2008 Farm Bill and in 7 CFR part 12;

(2) The implementation of conservation plan as defined in 7 CFR 1410.2, a forest stewardship plan as defined in 16 U.S.C. 2103(a), or an equivalent plan as determined by the Deputy Administrator;

(3) A commitment to provide information to promote the production of eligible crops and the development of biomass conversion technology; and

(4) Other information deemed appropriate by CCC, such as the preservation of cropland bases and yield history.

CCC invites comments on additional conservation or stewardship measures that could be included in a contract to provide incentives or otherwise encourage conservation, stewardship wildlife habitat or sustainability practices above the statutory requirements.

Contract durations may be up to 5 years for annual and non-woody perennial crops, and up to 15 years for woody perennial crops. CCC proposes flexibility to adjust the terms of the contract length on a per project basis in order to ensure the most efficient use of government funding. The establishment time period may vary due to: type of crop, agronomic conditions (establishment time frame, winter hardiness, *etc*), and other factors. CCC would establish the time frame based on the recommendations received from the State Technical Committee.

CCC proposes that the contracts would take into account an establishment period appropriate for an existing crop's harvest or for the planting of a planned crop. BCAP contracts and conservation plans would be designed in an effort to promote the production of a long-term source of biomass feedstock that can be harvested and collected in a reasonable period of time. The expectation, which will be reflected in the contract, is that eligible crops funded under BCAP will produce at least one harvest for biomass within the period of the contract.

Contracts would be subject to modification and payment reductions if

any of the contract terms are violated. Participants that choose to voluntarily withdraw from BCAP before the duration of their contract has ended would be subject to early contract termination penalties and payment refunds.

In exchange for signing BCAP contracts, CCC will share not more than 75 percent of the cost with participants of establishing non-woody and woody perennial crops, pay an annual payment for enrolled land, and provide for the preservation of cropland base and yield history applicable to the land enrolled in the BCAP contract.

**Eligible and Ineligible Land**

The contract acreage would consist of only the eligible lands that are covered under the producer's contract with the CCC. The 2008 Farm Bill defines eligible land for project areas as agricultural land and nonindustrial private forest land, subject to certain exclusions.

CCC proposes, in accordance with exclusions in the 2008 Farm Bill, that land considered ineligible to be enrolled under a BCAP contract includes:

(1) Federal lands;

(2) State-owned, municipal, or other locally-owned lands;

(3) Native sod; and

(4) Land that is already enrolled in CCC's Conservation Reserve Program, Wetlands Reserve Program, or Grassland Reserve Program.

CCC proposes that eligible agricultural land includes:

(1) Cropland;

(2) Grassland;

(3) Pastureland;

(4) Rangeland;

(5) Hayland; and

(6) Other lands on which food, fiber, or other agricultural products are produced or capable of being produced for which a valid conservation plan exists or is implemented.

CCC proposes that agricultural lands with already established energy crops or already contracted for energy crops or planned energy crops would be eligible lands for contract acreage. In other words, as noted earlier, producers who started growing renewable biomass before BCAP was implemented may enter into a contract with CCC for annual payments. We do not intend to exclude "early adopters" of biomass crops.

Nonindustrial private forest land is defined in this rule, in accordance with the 2008 Farm Bill, as rural land with existing tree cover, or suitable for growing trees, owned by any private individual, group, association, corporation, Indian Tribe, or other private legal entity. CCC proposes that this definition allows for the inclusion of properties such as a privately held tree farm or a private forest landowners' cooperative. This is consistent with the definitions of "landowner" and "nonindustrial private forest land" in 36 CFR 230.2 (the relevant Forest Service regulation), which includes private legal entities as landowners of such forest land but excludes corporations whose stocks are publicly traded or legal entities principally engaged in the production of wood products. CCC proposes that existing nonindustrial private forest land with existing tree cover can enter into contract acreage with an approved biomass conversion facility and be eligible for annual payments, subject to a forest stewardship plan. Establishment payments will only be made for woody perennial crops with a projected initial harvest time occurring within the length of the contract period.

As discussed earlier, contract acreage will be subject to minimum contract terms which include, but are not limited to, the implementation of a required conservation plan or forest stewardship plan (or the equivalent); and compliance with highly erodible and wetland conservation requirements of 7 CFR part 12. While land enrolled in other USDA programs could be eligible lands for contract acreage, the contracting producer could not receive multiple program benefits for purposes that are the same or substantially similar to the purposes of BCAP. A contracting producer must choose whether to receive BCAP payments or other USDA or Federal program benefits where those benefits are designed to achieve the same purposes as BCAP.

Land use restrictions would not apply to contract acreage provided that CCC determines that the land uses would be consistent with the conservation plans or forest stewardship plans (or the equivalent) and any other BCAP conservation requirements. CCC requests comments on other applicable contract terms concerning conservation requirements along with a justification for the contract term. For example, contracts may also contain biomass delivery or sale expectations or requirements to ensure the crops are not sold off into hay markets, or other non-BCAP uses.

**Making Establishment Payments**

Consistent with the 2008 Farm Bill, establishment payments of not more than 75 percent of the cost for establishing a perennial crop, which could include woody biomass, would include:

(1) The costs of seed and stock for perennials;

(2) The cost of planting the perennial crop;

(3) For non-industrial forest land, the costs of site preparation and tree planting;

(4) Other proposed establishment activities that could include, but would not be limited to, site preparation for non-tree planting and supplemental or temporary irrigation.

In addition, partial payments could be authorized when identifiable components of the contract are completed; and supplemental establishment payments may be authorized if necessary.

Consistent with the 2008 Farm Bill, CCC proposes that establishment payments would not be authorized for annual crops. In addition, prior to receiving establishment payments, producers must have planted their crops and must provide their FSA county office with copies of receipts and invoices related to the cost of establishing their crops.

**Making Annual Payments**

CCC proposes to calculate annual payments on a per acre basis and would use market-based rental rates, as determined by CCC. The payments are intended to support production of eligible crops. Annual payment rates will be established at levels required to ensure sufficient participation in a project area.

As specified in the regulations in 7 CFR 1410.42 and as determined by CCC, annual payments will include a payment based on:

(1) A weighted average soil rental rate for cropland;

(2) The applicable marginal pastureland rental rate for all other land except for non-industrial private forest land; and

(3) For forest land, the average county rental rate for cropland as adjusted for forestland productivity for non-industrial private forest land.

This rate information is being posted at FSA county offices (as FSA posts information for CRP). There are site-specific factors including type of soil and land use. There is too much information to post it all on the Web. FSA can provide general information about rates.

CCC will post in FSA county offices the county specific base-line rental rates for cropland, marginal pastureland and forestland. In addition, the applicable additional incentive rates (premiums) will be posted for specific project area or specific crop mixes within the project area.

In determining the applicability of incentive payments (premiums) to the annual base-line soil rental rates the Deputy Administrator will consider the costs of establishing the crop, and the potential to establish perennial biomass crops that show exceptional promise to produce highly energy efficient bioenergy or biofuels, that preserve natural resources and are not primarily grown for food or animal feed or that also address specific resource conservation needs.

Annual payments would be reduced if:

(1) An eligible crop is used for purposes other than the production of energy, then a dollar-for-dollar reduction would apply, not to exceed the total payment amount;

(2) An eligible crop is delivered to the biomass conversion facility that is not within the project area;

(3) The producer receives a matching payment;

(4) The producer violates a term of the contract; or

(5) Other circumstances as determined by CCC.

We must reduce payments to avoid duplicate benefits, but as described below, the annual payment reduction for delivery to a biomass facility or for matching payments will likely be less than a full, dollar-for-dollar reduction, because the purpose of BCAP is to encourage biomass energy production.

The 2008 Farm Bill authorizes agricultural land and non-industrial private forest land for annual payments. Agricultural land consists of cropland, pastureland, rangeland, and grassland. CCC proposes to calculate market-based rental rates for cropland, consistent with the CRP regulations in 7 CFR part 1410; and for all other agricultural land at the rate that would be paid for pastureland, consistent with CRP.

CCC proposes to calculate the market-based payment rate for non-industrial forest land using the average county rental rate for cropland developed for CRP and adjusting that rate by comparing the average productivity of cropland compared to the average productivity of forestland.

If the crop is delivered to a biomass conversion facility, payment reductions would be applied in an amount equal to at least 25 percent of the authorized annual payment, but not a full dollar-for-dollar reduction, for each contract acre. If the harvested production is sold for any other reason, a dollar-for-dollar reduction would apply, not to exceed the total annual payment.

CCC proposes that half of the first year's annual payment would be made within 30 days of the date of contract approval and the balance paid on the annual contract enrollment anniversary. Subsequent annual payments would be made every year within 30 days after the contract anniversary date. Under the proposed rule, payments may cease and producers may be subject to contract termination for failure to plant eligible crops.

To be considered a biomass conversion facility, one of the criteria that may be met is whether the facility converts or proposes to convert a biobased product. The 2008 Farm Bill defined biobased products as a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—"(A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (B) an intermediate ingredient or feedstock." The NOFA excluded commercially-produced timber, lumber, wood pulp, or other finished wood products that otherwise could be used for higher-value products. CCC proposes to continue the exclusion of commercially-produced timber, lumber, wood or other finished products that otherwise would be used for higher value products. Additionally, CCC proposes to clarify that industrial or other process wastes or by-products, such as black liquor or pulp liquor that is a waste by-product of the pulp and kraft paper manufacturing process, are not included within the definition of biobased products because they are not significantly composed of organic or biological products collected or harvested from land.

**Key Provisions Comparison**

This table compares key provisions of matching payments versus establishment and annual payments:

| | Matching payments | Establishment and annual payments |
|---|---|---|
| Geographic Eligibility | Not limited geographically | Limited to designated project area. |
| Project Sponsor | Not applicable | A project sponsor proposes project areas and may be a:<br>• Biomass conversion facility, including facilities owned by Federal entities, State entities, local government entities, or privately or publicly held entities; or<br>• Group of producers. |
| Eligible Material Owner or Eligible Producer. | An eligible material owner may be:<br>• A producer within a project area;<br>• A biomass conversion facility;<br>• A person or entity with the legal title to an intermediate ingredient or feedstock; or<br>• A person or a non-Federal entity that has legal title to an eligible material, including Indian Tribes and Tribal members<br>An Eligible Material Owner cannot be a Federal government entity. | An eligible producer may be a:<br>• Biomass conversion facility that owns or operates eligible land or<br>• Person or entity with the legal title to privately held lands or land held in trust by the Federal government.<br>An eligible producer cannot be a:<br>• Federal government entity, or<br>• State or local government entity. |

| | Matching payments | Establishment and annual payments |
|---|---|---|
| Land Limitations or Eligible Land. | Eligible material must be harvested or collected from certain:<br>• U.S. National Forest System and BLM lands,<br>• Non-Federal lands, including State- and locally-held government lands, or<br>• Tribal land held in trust by the Federal government | Eligible land is certain:<br>• Agricultural land, such as cropland, pastureland, rangeland, grassland, or other lands on which food, fiber, or other agricultural products are produced or capable of being produced; or<br>• Nonindustrial private forest lands that are:<br>○ Rural lands with existing tree cover, or are suitable for growing trees; and<br>○ Owned by any private individual, group, or association.<br>Eligible land cannot be:<br>• Federal- or State-owned land;<br>• Land that is native sod; or<br>• Land enrolled in the:<br>○ CRP;<br>○ Wetlands Reserve Program; or<br>○ Grassland Reserve Program. |
| Eligible Crop or Material ..... | Eligible material is certain:<br>• Materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Bureau System land that:<br>○ Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;<br>○ Would not otherwise be used for higher-value products; and<br>○ Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of section 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f)<br>• Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:<br>○ Renewable plant materials such as feed grains, other agricultural commodities, and other plants and trees; and<br>○ Waste materials including vegetative waste comprised of crop residues such as corn stover or wood wastes and wood residues that would not otherwise be used for higher-value products<br>Eligible material does not include:<br>• Whole grain derived from any crop that is eligible to receive payments under Title I of the 2008 Farm Bill<br>• Animal waste and byproducts (including fats, oils, greases, and manure);<br>• Food waste and yard waste;<br>• Algae. | Eligible crop is:<br>• Renewable plant materials such as feed grains, other agricultural commodities, other plants and trees, and algae;<br>• Waste materials including vegetative waste comprised of crop residues such as corn stover, woods wastes, and wood residues;<br>• Animal waste and byproducts,<br>• Food Waste; and<br>• Yard waste.<br>Ineligible crops include:<br>• Any crops that is eligible to receive payments under Title I of the 2008 Farm Bill.<br>• Any plant that is invasive or noxious or has the potential to become invasive or noxious. |
| Authorized Payments ..... | A matching Payment at a rate of $1 for each $1 per dry ton equivalent paid by the qualified biomass conversion facility:<br>• In an amount up to $45 per dry ton but only for on-site heat or power production from wood wastes and residues above an historical baseline;<br>• In an amount up to $45 per dry ton for materials used to produce advanced biofuels and in an amount up to $16 per dry ton for material used for renewable energy or biobased products; or<br>• In an amount to be reduced in relation to increases in biofuel, renewable energy or biobased product production above a historical baseline | Establishment payments at a rate of not more than 75 percent of establishment costs based on:<br>• The costs of seed and stock for perennials;<br>• The cost of planting the perennial crop; and<br>• For non-industrial forest land, the costs of site preparation and tree planting(s).<br>Annual payments equal to the market rate plus any incentive as provided for in a specific project area. |

| | Matching payments | Establishment and annual payments |
|---|---|---|
| Payment Reductions ..... | There are no comparable payment reductions .....<br>If eligible and ineligible materials are comingled in the load, payment will only be made for eligible materials | Annual payments will be reduced if:<br>• An eligible crop is used for a purpose other than the production of energy at the biomass conversion facility;<br>• An eligible crop is delivered to the biomass conversion facility outside of the project area;<br>• The producer receives a payment for collection, harvest, storage, or transportation; or<br>• The producer violates a term of the contract.<br>• Under the proposed rule, payments may cease and producers may be subject to contract terminations for failure to establish eligible crops. |
| Payment Timing ..... | Matching payments are paid within 30 days after submission of sales invoice(s) from the qualified biomass conversion facility and completion of application for payment. | Establishment payments are paid when the perennial or tree crop practice or identifiable portion of the practice has been completed according to the BCAP conservation or forestry plan.<br>Annual payments are paid:<br>• As an advance payment in an amount equal to 50 percent within 30 days of contract approval with the remaining 50 percent within 30 days of the first-year contract anniversary date, and<br>• Within 30 days of the contract anniversary beginning with the second-year contract anniversary. |
| Duration ..... | Payment duration is two years from the date on which the first matching payment is issued to an eligible person or entity. | Contract duration is up to:<br>• Five years for annual and non-woody perennial crops, and<br>• 15 years for woody perennial crops. |
| Project Area Proposals or Matching Payment Applications. | An eligible material owner must apply for a matching payment at the FSA county office after delivery of eligible material to a qualified biomass conversion facility. | Project area proposals may be submitted under a continuous signup.<br>After a project area has been approved, eligible persons and legal entities within that project area may enroll in a BCAP contract on a continuous basis at the FSA county office. |

**Discussion of Transition From BCAP NOFA to BCAP Final Rule**

Under the NOFA, FSA is making CHST matching payments for eligible material delivered to qualified biomass conversion facilities.

When the final rule is published, conforming changes will be made to the matching payment component based on the proposed rule, public comments received, and input from the Programmatic Environmental Impact Statement and other sources. FSA will also implement the establishment and annual payments component by receiving project area proposals and entering into BCAP contracts with producers for the production of appropriate renewable biomass.

**Final Determination**

The Notice of Funds Notice of Funds Availability (NOFA) for the Collection, Harvest, Storage, and Transportation of Eligible Material published on June 11, 2009 (74 FR 27767–27772), is hereby terminated and rescinded, effective February 8, 2010. No additional payments will be made pursuant to the NOFA except as specifically approved by the Executive Vice President, Commodity Credit Corporation.

**Notice and Comment**

The Administrative Procedures Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, a proposed rule must be published in the **Federal Register,** and interested persons must be given an opportunity to participate in the rulemaking through submission of data, views, or arguments. The law exempts from this requirement rules, such as this one, relating to public property, loans, grants, benefits, and contracts. However, the Secretary of Agriculture published in the **Federal Register** on July 24, 1971 (36 FR 13804), a Statement of Policy that USDA would publish a notice of proposed rulemaking for such rules. USDA is committed to providing the public reasonable opportunity to participate in rulemaking. Therefore, this rule has a 60-day comment period.

**Executive Order 12866**

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The Cost Benefit Analysis is summarized below and is available from the contact information listed above.

**Cost Benefit Analysis Summary**

BCAP is intended to assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation (CHST) of eligible material for use in a biomass conversion facility and to support the establishment and production of eligible crops including woody biomass for conversion to bioenergy in selected project areas.

Establishment and Annual Payments are provided for eligible crops on eligible land within project areas that satisfy selection criteria. The strongest project proposals will be those associated with biomass conversion facilities already in operation or that are economically viable before the creation of BCAP. While early projects are not dependent solely on BCAP support, certainly BCAP may hasten early projects.

Matching payments will tend to go to eligible material owners experienced in the collection, harvest, storage and delivery of biomass feedstock. While matching payments are provided for

eligible materials delivered to qualifying biomass conversion facilities, opportunities to stimulate additional demand in this Farm Bill cycle, either in terms of increasing the construction of qualifying biomass conversion facilities or increasing the planting of biomass feedstock that qualifying biomass conversion facilities demand. Qualifying biomass conversion facilities are expected to be those in operation by 2012 because it would be difficult for a biomass conversion facility to get on line by 2012 that is not already in the pipeline. Given the substantial capital costs associated with energy generation and fuel production, qualifying biomass conversion facilities in operation by 2012 are assumed to operate at capacity with or without BCAP.

Annual costs for the two parts of the program are presented in the following table. Establishment and annual payments total $536 million, including technical assistance (TA),[1] and matching payments amount to $2.1 billion.

TABLE 1—BCAP COSTS BY YEAR

[2009 $ millions]

| Year | Establishment cost share | Annual payments | Technical assistance | Matching payments | Annual total |
|---|---|---|---|---|---|
| 2010 | 78 | 4 | 3 | 392 | 435 |
| 2011 | 107 | 11 | 4 | 783 | 822 |
| 2012 | 121 | 17 | 5 | 783 | 844 |
| 2013 | | 17 | | 392 | 367 |
| 2014 | | 17 | | | |
| 2015 | | 16 | | | |
| 2016 | | 16 | | | |
| 2017 | | 15 | | | |
| 2018 | | 14 | | | |
| 2019 | | 13 | | | |
| 2020 | | 13 | | | |
| 2021 | | 12 | | | |
| 2022 | | 13 | | | |
| 2023 | | 13 | | | |
| 2024 | | 13 | | | |
| 2025 | | 9 | | | |
| 2026 | | 5 | | | |
| Subtotals | 306 | 219 | 11 | | |
| | | | 536 | 2,100 | |
| Total | | | | 2,636 | |

**Note:** Due to rounding, the subtotals may not exactly match calculated estimates shown later in the CBA.

As explained in the analysis, the majority of BCAP matching payments are expected to go those eligible material owners who are delivering material predominantly to existing biomass conversion facilities that use woody biomass.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, CCC has determined that there will not be a significant economic impact on a substantial number of small entities. Entities affected by this rule are producers of eligible crops, eligible biomass material owners, and biomass conversion facilities. The small business size standards for them are no more than:

- $750,000 per year gross revenue for crop production (producers of eligible crops);
- $7 million per year gross revenue for post harvest crop activities (eligible material owners); and
- 4 million megawatt hours per year for other electric power generation (biomass conversion facilities).

Given these size standards, it is reasonable to assume that many of businesses involved in BCAP will be small businesses.

We expect that approximately 7,500 producers of eligible crops and 50 biomass conversion facilities may receive establishment and annual payments and approximately 9,936 eligible material owners (that are not affiliated with a biomass conversion facility) and 701 biomass conversion facilities may be affected (which includes the 50, above) may receive matching payments.

However, in light of the ability of biomass conversion facilities to determine prices and receive program payments, producers of eligible crops and eligible biomass material owners are not expected to be significantly impacted. And given the scale of BCF output, as well as the limited duration of the BCAP, biomass conversion facilities are also not expected to be significantly impacted by the program.

**Environmental Review**

Under the National Environmental Policy Act (NEPA), the Environmental Impact Statement (EIS) process provides a means for the public to provide input on program implementation, alternatives, and environmental concerns. CCC provided an amended notice of intent to prepare a programmatic EIS on BCAP in the **Federal Register** on May 13, 2009 (74 FR 22510–22511) and solicited public comment on the proposed alternatives to be examined in the programmatic EIS for BCAP. Six public scoping meetings were held in May and June 2009 to solicit comments for the development of alternatives and identify possible environmental concerns.

On August 10, 2009, a Notice of Availability was published in the

[1] All NPV calculations assume a 3% discount rate.

**Federal Register** (74 FR 39915) announcing the availability of a Draft Programmatic EIS (PEIS) for the administration and implementation of the BCAP. Comments on the Draft Programmatic EIS may be submitted until September 24, 2009.

The Draft PEIS has taken into consideration comments gathered during the scoping meetings to develop the alternatives proposed for the administration and implementation of BCAP. The Draft PEIS assesses the potential environmental impacts associated with the following three alternatives:

(1) *No Action Alternative*—Addresses the potential effects from not implementing BCAP. (This is considered the environmental baseline by which to compare the other alternatives against and is required by law.)

(2) *Action Alternative 1*—Addresses a targeted implementation of BCAP to specific areas or regions of the United States.

(3) *Action Alternative 2*—Addresses a broad national implementation of BCAP.

**Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

**Unfunded Mandates**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose "Federal Mandates" that may result in expenditures to State, local, or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Federal Assistance Programs**

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this proposed rule would apply is 10.087—Biomass Crop Assistance Program.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, FSA is requesting comments from all interested individuals and organizations on a revision of new information collection activities associated with BCAP. FSA also included additional burden for the Emergency Conservation Program (ECP) in this proposed rule as described further below.

The approved burden hours will be eventually incorporated into the existing approval under OMB control number 0560–0082, which includes much of the same information for other conservation programs.

BCAP continues to provide financial assistance for collection, harvest, storage, and transportation of eligible material nationwide. BCAP also provides financial assistance establishment payments for perennial crops and annual production payments for perennial and annual crops in approved BCAP project areas. Support for both eligible material and eligible crops are intended to establish a long term feedstock for use in a biomass conversion facility in accordance with the 2008 Farm Bill.

Copies of all forms, regulations, and instructions referenced in this rule may be obtained from FSA. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Additionally, the information collection request for the matching payment funds available for the collection, harvest, storage, and transportation of eligible material was approved under the OMB control number 0560–0263 under the emergency procedure in accordance with the Paperwork Reduction Act of 1995. That information collection was incorporated into the existing OMB control number 0560–0082. The 60-day comment period was also published in the NOFA **Federal Register** on June 11, 2009 (74 FR 27767–27772) to solicit public comments. The comment period ended on August 10, 2009. One comment was received on requesting to extend comment period on the information collection to implement BCAP. This proposed rule provides a 60-day comment period.

*Title:* BCAP.

*OMB Control Number:* 0560–NEW.

*Type of Request:* New.

*Abstract:* This information collection is needed to comply with section 9011 (b)(2) of Title IX of the Farm Security and Rural Investment Act of 2002 (U.S.C. 8101–8113), which was added by the 2008 Farm Bill.

For the administration of matching payments to be continued and expanded to more respondents in this information collection, FSA employees will enter the application information from completed paper forms into a Web based system that collects information categories similar to the electronic AD–245 application for cost-share form, which is currently approved under OMB control number 0560–0082 for other conservation programs. The Web based matching payment form, BCAP–5 form, will collect information about the owners of eligible material and estimated and actual biomass material sold and delivered to a qualified biomass conversion facility in order to approve applications for BCAP matching payments and to calculate matching payments after sale and delivery. BCAP will also have eligible material owners complete the CCC–901 form concerning members' information or ownership. This form will enable the adherence to the arm's length transaction requirement and the two year limit for eligibility to receive matching payments. BCAP will also use the existing AD–1047 certification regarding debarment, suspension, and other responsibility matters (primary covered transactions form). The AD–1047 form will help ensure that only

those owners and managers of qualified biomass conversion facilities and those owners of eligible material who have not been disbarred, suspended, or otherwise made ineligible for Federal transactions are qualified or determined eligible for BCAP. The AD–1047 form will require the owners to certify that they are in compliance and not subject to disbarment or suspension. The information collection activities for matching payments will include the following:

(1) Applicants will request to become a qualified biomass conversion facility or

(2) Applicants will register as an eligible material owner and then, after delivery of eligible material, request matching payments for the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

Specific descriptions of the information requirements were discussed in the NOFA under the application sections. Matching payments applicants submit estimates to register as eligible material owners and actual delivery information to request matching payments and biomass conversion facilities enter into an agreement giving a conversion facility overview. If the Deputy Administrator determines that additional information is necessary from an eligible material owner or a biomass conversion facility, it will be related information required to determine eligibility, ensure the ability to make proper payments, or to otherwise legally provide benefits to an eligible material owner, such as the FSA–211 form which provides power of attorney assignment.

For the administration of project areas, FSA employees will enter proposal information from project sponsors into an electronic format. The BCAP–4 form will be used to provide a summary of the project area proposal. The BCAP–4 form will provide project sponsors the ability to provide information overview for a variety of application factors which include: Documentation of sufficient equity for start-up biomass conversion facilities committed to the project area, land description in GIS shape file coordinates, transportation modes, distance of the biomass conversion facility in relation to eligible lands, job development and retention factors, and biomass conversion facility's production potentials or history. The information collection will be used to review project area criteria outlined by the 2008 Farm Bill. Categories expected on the proposals, consistent with the 2008 Farm Bill will include, but not be limited to, volume of eligible crops, volume of renewable biomass, job creation projections, number of producers, number of biomass conversion facilities, projected participation rates for beginning and socially disadvantaged farmers or ranchers, projected environmental impacts, agronomic conditions, and range of crops. A BCAP worksheet will be required for environmental screening, similar to the existing FSA–850 form. This information will help facilitate the selection of BCAP project areas and allow producers in those BCAP project areas the opportunity to apply for establishment and annual production payments.

For the administration of BCAP project area establishment and annual production payments, FSA employees will first enter producer information into a Web based BCAP–2 producer worksheet and then, if eligible, may enter into a contract for annual production payments using the BCAP–3 form with appendix and continuation sheet for annual production payments. The BCAP producer forms and worksheets will be used for sign up, determining the offer soil rental rate, and contracting. The BCAP producer forms will capture the terms and conditions of the contract into electronic form, as well as be used to determine eligibility of the producer and the producer's contract acreage. The BCAP producer contract will also use the existing AD–1026 and BCAP–817U form. The AD–1026 form ensures that before producers clear, plow, or otherwise prepare areas not presently under crop production for planting, they certify that production will not violate either Highly Erodible Land Compliance (HELC) or wetland conservation provisions. Most producers will already have existing AD–1026 forms. In addition we will also require producers to complete and submit the BCAP–817U form annually for the certification of compliance with BCAP. Annual payments to producers will be administered using a BCAP–3 contract, which is Web based and provides a payment calculation method that is similar to the existing AD–245 form. Other forms will be used as needed to facilitate payments for special circumstances, such as assignment of payment (CCC–36 form), joint payment authority (CCC–37 form), applicant's agreement to complete an uncompleted practice (FSA–18 form), application for payment of amounts due to persons who have died or disappeared (FSA–325 form), power of attorney (FSA–211); member's information (CCC–901); report of acreage (FSA–578); and voluntary permanent direct and counter-cyclical program base reduction (CCC–505 form).

For establishment payments, FSA employees in addition to the BCAP producer form and worksheet and AD–1026 form, will use the new Web based conservation cost share forms (FSA–848, FSA–848A, FSA–848B, FSA–848–1, FSA–848A–1, and FSA–848B–1 forms). The FSA–848 form is a cost-share application used to document the producer's request for conservation cost share and the needs determination, which is completed to determine the actual amount of cost share that is needed, and to estimate and calculate the establishment costs for agricultural and nonindustrial private forest landowners that enter into BCAP and propose to convert land to renewable crops or establish renewable crops. The FSA–848A form is used to record the approval of a conservation cost share agreement (which when approved is a contract), the amount of cost share approved, and the producer's acknowledgement of the approval. FSA–848B form is used to record performance of conservation practices agreed to in the conservation cost share contract and cost share payments associated with that performance. The FSA–848, FSA–848A, and FSA–848B forms each include a continuation form (FSA–848–1, FSA–848A–1, and FSA–848B–1, respectively). Producers will be required to provide an annual report of acreage using the existing Web based FSA–578 form.

FSA is also adding burden for the use of some of the same forms for ECP into this proposed rule for public comment. ECP is one of the other conservation programs covered under OMB control number 0560–0082. ECP provides cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought. ECP will use the FSA–848, FSA–848A, FSA–848B, FSA–848–1, FSA–848A–1 and FSA–848B–1 forms. These forms will be used to more efficiently collect information when Web-based conservation cost share software is fully implemented. The ECP burden in this proposed rule will also be rolled into the existing approval under the OMB control number 0560–0082.

*Estimate of Burden:* Public reporting burden for the collection of information is estimated to average 1 hour. The average travel time, which is included

below in the total burden, is estimated to be 1 hour per respondent.

*Respondents:* Individuals, Indian Tribes, units of State or local government, partnerships, corporations, farm cooperatives, farmer cooperative organizations, associations of agricultural producers, national laboratories, institutions of higher education, rural electric cooperatives, public power entities, consortia of any of these entities, biomass conversion facilities that own or operate eligible land, and any other legal entities.

*Estimated Number of Respondents:* 336,900.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 681,900.

*Estimated Total Annual Burden on Respondents:* 265,233.

We are requesting comments on all aspects of the information collection to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**E-Government Act Compliance**

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 1450**

Administrative practice and procedure, Agriculture, Energy, Environmental protection, Grant programs—agriculture, Natural resources, Reporting and recordkeeping requirements, Technical assistance.

For the reasons discussed in the preamble, the Commodity Credit Corporation (USDA) proposes to add 7 CFR part 1450 to read as follows:

## PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

### Subpart A—Common Provisions

Sec.



### Subpart B—Matching Payments



### Subpart C—Establishment and Annual Payments



**Authority:** 7 U.S.C. 8111; 15 U.S.C. 714b and 714c.

## Subpart A—Common Provisions

### § 1450.1 Administration.

(a) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), or a designee, or the Deputy Administrator, Farm Programs, Farm Service Agency (FSA), (Deputy Administrator). In the field, the regulations in this part will be implemented by the FSA State and county committees ("State committees" and "county committees," respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee will preclude the Executive Vice President, CCC, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

### § 1450.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions will apply to this part:

*Advanced biofuel* means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from renewable biomass and other fuel derived from cellulosic biomass.

*Agricultural land* means cropland, grassland, pastureland, rangeland, hayland, and other land on which food, fiber, or other agricultural products are produced or capable of being produced.

*Animal waste* means waste associated with animal operations such as confined beef or dairy, poultry, or swine operations including manure,

contaminated runoff, milking house waste, dead poultry, bedding, and spilled feed. Depending on the poultry system, animal waste can also include litter, wash-flush water, and waste feed.

*Annual payment* means the annual payment specified in the BCAP contract that is made to a participant to compensate a participant for placing eligible land in BCAP.

*Beginning farmer or rancher* means, as determined by CCC, an individual or entity who:

(1) Has not operated a farm or ranch for more than 10 years,

(2) Materially and substantially participates in the operation of the farm or ranch, and

(3) If an entity, is an entity in which all members or stockholders of the entity meet the provisions in paragraphs (1) and (2) of this definition.

*Biobased product* means a product determined by CCC to be a commercial or industrial product (other than food or feed) that is:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

*Bioenergy* means renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

*Biomass conversion facility* means a facility that converts or proposes to convert eligible material into heat, power, biobased products, or advanced biofuels.

*Conservation district* is as defined in part 1410 of this chapter.

*Conservation plan* means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

*Contract acreage* means eligible land that is covered by a BCAP contract between the producer and CCC.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or a designee.

*Dry ton* means one U.S. ton measuring 2,000 pounds. One dry ton (ODT, sometimes termed as oven- or bone-dry ton) is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.

*Eligible crop* means a crop of renewable biomass as defined in this section excluding:

(1) Whole grain derived from a crop of barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

*Eligible material* is renewable biomass as defined in this section excluding:

(1) Whole grain derived from a crop of barley, corn, grain sorghum, oats, rice, and wheat; oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts, pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and, cotton boll fiber;

(2) Animal waste and byproducts of animal waste including fats, oils, greases, and manure;

(3) Food waste and yard waste; and

(4) Algae.

*Eligible material owner,* for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material and who has delivered or intends to deliver the eligible material to a qualified biomass conversion facility, including:

(1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and

(2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted a copy of the permit or contract authorizing such collection to CCC.

*Establishment payment* means the payment made by CCC to assist program participants in establishing the practices required for non-woody perennial crops and woody perennial crops, as specified in a producer contract.

*Food waste* means a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

*Forest stewardship plan* means a long-term, comprehensive, multi-resource forest management plan that is prepared by a professional resource manager and approved by the State Forester or equivalent State official. Forest Stewardship Plans address the following resource elements wherever present, in a manner that is compatible with landowner objectives concerning:

(1) Soil and water;

(2) Biological diversity;

(3) Range;

(4) Aesthetic quality;

(5) Recreation;

(6) Timber;

(7) Fish and wildlife;

(8) Threatened and endangered species;

(9) Forest health;

(10) Archeological, cultural and historic sites;

(11) Wetlands;

(12) Fire; and

(13) Carbon cycle.

*Highly erodible land* means land determined as specified in part 12 of this title.

*Indian Tribe* has the same meaning as in 25 U.S.C. 450b (section 4 of the Indian Self-Determination and Education Assistance Act).

*Intermediate ingredient or feedstock* means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material (including plant, animal, and marine material), or forestry material that is subsequently used to make a more complex compound or product.

*Institution of higher education* has the same meaning as in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

*Matching payments* means those CCC payments provided to the owner of eligible material delivered to a qualified biomass conversion facility.

*Native sod* means land:

(1) On which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and

(2) That has never been tilled for the production of an annual crop as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE *FEDERAL REGISTER*].

*Nonindustrial private forest land* means rural lands with existing tree cover, or that are suitable for growing trees, which are owned by any private individual, group, association, corporation, Indian Tribe, or other

private legal entity, consistent with the definitions of nonindustrial private forest land and landowner in 36 CFR 230.2, and the regulations in 36 CFR 230. 31.

*Offer* means, unless otherwise indicated, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the establishment and annual payment component of BCAP.

*Operator* means a person who is in general control of the land enrolled in BCAP, as determined by CCC.

*Payment period* means a contract period of either up to 5-years for annual and non-woody perennial crops, or up to 15 years for woody perennial crops during which the participant receives an annual payment under the establishment and annual payment component of BCAP.

*Producer* means an owner or operator of contract acreage that is physically located within a project area under the establishment and annual payment component of BCAP.

*Project area* means a geographic area with specified boundaries submitted by a project sponsor and approved by CCC under the establishment and annual payment component of BCAP.

*Project sponsor* means a group of producers or a biomass conversion facility who proposes a project area.

*Qualified biomass conversion facility* means a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a BCAP agreement with CCC.

*Related-party transaction* means a transaction between two or more ready, willing, and able organizations, trades, or business (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) substantially owned or controlled directly or indirectly by the same interests, as determined by the Deputy Administrator.

*Renewable biomass* means the following:

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Department of the Interior Bureau of Land Management land that:

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention provisions of subsection (f); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, or algae);

(ii) Waste material, including

(A) Crop residue;

(B) Other vegetative waste material (including wood waste and wood residues that would not otherwise be used for higher-value products);

(C) Animal waste and byproducts (including fats, oils, greases, and manure); and

(D) Food waste and yard waste.

*Socially disadvantaged farmer or rancher* means, unless other classes of persons are approved by the Deputy Administrator in writing, persons who are:

(1) American Indians or Alaska Natives (that is, persons who are members of that class of persons who originally settled Alaska);

(2) Asian-Americans;

(3) African-Americans; or

(4) Hispanic-Americans.

*Technical assistance* means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with BCAP to owners or operators, as approved by CCC, includes, but is not limited to: Technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and technical infrastructure, including activities, processes, tools, and functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Tribal government* means any Indian Tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*United States* means all fifty States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

*Violation* means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible to receive or retain all or a portion of BCAP payments.

*Yard waste* means a waste material derived from the urban environment including construction and demolition debris and municipal solid waste.

### § 1450.3 General description.

(a) The objectives of BCAP are to:

(1) Support the establishment and production of eligible crops for conversion to bioenergy in selected project areas; and

(2) Assist agricultural and forest landowners and operators with matching payments to support the collection, harvest, storage, and transportation costs of eligible material for use in a biomass conversion facility.

(b) A participant must implement and adhere to a conservation plan prepared in accordance with BCAP guidelines, as established and determined by CCC. A conservation plan for contract acreage must be implemented by a participant and must be approved by the conservation district in which the lands are located. If the conservation district declines to review the plan, the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) Agricultural and forest landowners and operators must comply with any existing conservation plans, forest stewardship plans and any other applicable laws for any removal of eligible material for use in a biomass conversion facility to receive matching payments.

(d) Except as otherwise provided, a participant may receive, in addition to any payments under this part, cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in BCAP, without any commensurate reduction in BCAP payments.

### § 1450.4 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a BCAP

contract, CCC may terminate the BCAP contract.

(2) If the BCAP contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under such contract and must refund all payments previously received, plus interest; and

(ii) The participant must pay liquidated damages to CCC in an amount as specified in the contract.

(b) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and would not deter the accomplishment of the goals of the program.

**§ 1450.5 Performance based on advice or action of USDA.**

(a) The provisions of § 718.303 of this title relating to performance based on the action or advice of an authorized representative of USDA applies to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise required by this part.

(b) [Reserved]

**§ 1450.6 Access to land.**

(a) For purposes related to this program, any representative of the U.S. Department of Agriculture, or designee thereof, must be provided with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant must provide such representatives or designees with access to examine records for the land to determine land classification, eligibility, or for other purposes, and to determine whether the participant is in compliance with the terms and conditions of the BCAP contract.

**§ 1450.7 Division of payments and provisions about tenants and sharecroppers.**

(a) Payments received under this part will be divided as specified in the applicable contract. CCC may refuse to enter into a contract when there is a disagreement among persons or legal entities seeking enrollment as to a person's or legal entity's eligibility to participate in the contract as a tenant or sharecropper, and there is insufficient evidence, as determined by CCC, to indicate whether the person or legal entity seeking participation as a tenant or sharecropper has an interest in the acreage offered for enrollment in the BCAP.

(b) CCC may remove an operator or tenant from a BCAP contract when:

(1) The operator or tenant requests in writing to be removed from the BCAP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined appropriate by the Deputy Administrator; or

(4) A court of competent jurisdiction orders the removal of the operator or tenant from the BCAP contract and such order is received by CCC.

(c) Tenants who fail to maintain tenancy on the acreage under contract for any reason may be removed from a contract by CCC.

**§ 1450.8 Payments not subject to claims.**

(a) Subject to part 1403 of this chapter, any cost-share or annual payment or portion of the payment due any person or legal entity under this part will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

(b) [Reserved]

**§ 1450.9 Assignments.**

(a) Participants may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

(b) [Reserved]

**§ 1450.10 Appeals.**

(a) Except as provided in paragraph (b) of this section, a person or legal entity applying for participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by the Natural Resources Conservation Service may be appealed in accordance with procedures established under part 614 of this title or otherwise established by the Natural Resources Conservation Service.

**§ 1450.11 Scheme or device.**

(a) If CCC determines that a person or legal entity has employed a scheme or device to defeat the purposes of this part, or any part, of any USDA program, payment otherwise due or paid such person or legal entity during the applicable period may be required to be refunded with interest, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or legal entity of cost-share assistance or annual payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities must report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest may include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest will be considered a scheme or device under this section.

**§ 1450.12 Filing of false claims.**

(a) If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the contract may be terminated, in which case CCC may demand a full refund of all prior payments.

(b) False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances must be refunded to CCC, together with interest as determined by CCC, and any amounts otherwise due the participant will be withheld.

(c) The remedies provided for in this section will be in addition to any other remedy available to CCC and in addition to any criminal penalty.

**§ 1450.13 Miscellaneous.**

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part will be paid to the participant's successor(s) in accordance with part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part will be subject to the compliance requirements of part 12 of this title concerning highly

erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part will be in addition to any other remedy, including, but not limited to, criminal remedies or actions for damages in favor of CCC, or the United States, as may be permitted by law. The Deputy Administrator may add to the contract such additional terms as are needed to enforce these regulations, which will be binding on the parties and may be enforced to the same degree as the other provisions of these regulations.

(d) Absent a scheme or device to defeat the purposes of the program, when an owner loses control of BCAP acreage enrolled under Subpart C of this part due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1450.215 refunds will not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

## Subpart B—Matching Payments

### § 1450.101 Qualified biomass conversion facility.

(a) To be considered a qualified biomass conversion facility, a biomass conversion facility must enter into an agreement with CCC and must:

(1) Meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;

(2) Agree in writing to:

(i) Maintain accurate records of all eligible material purchases and related documents regardless of whether matching payments will be sought; and

(ii) Make available at one place and at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program for not less than 3 years from the date of application as a qualified biomass conversion facility;

(iii) Make information available to USDA and institutes of higher education and to allow general information about the facility and its eligible material to be made public by USDA and other entities after qualification is determined;

(iv) Clearly indicate on the scale ticket or equivalent the actual tonnage delivered, provide a copy of the scale ticket(s) or equivalent, and provide it to the eligible material owner;

(v) Calculate a total dry ton weight equivalent to the actual tonnage delivered and provide that measurement to the eligible material owner;

(vi) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered; and

(vii) For those facilities that convert vegetative waste materials such as wood wastes and wood residues into heat or power for consumption at the facility, provide the Deputy Administrator with such information as needed to establish the historical baseline for heat or power production from wood wastes or residues.

(b) For a qualified biomass conversion facility, CCC will periodically inform the public that matching payments may be available for deliveries of eligible material to such qualified biomass conversion facility. CCC will maintain a listing of qualified biomass conversion facilities for general public access and distribution that may include general information about the facility and its eligible material needs.

### § 1450.102 Eligible material owner.

(a) In order to be eligible for a BCAP matching payment, a person or legal entity must:

(1) Be a producer of an eligible crop that is produced on BCAP contract acreage authorized by this subpart.

(2) Have the right to collect or harvest eligible material.

(3) Not be a party to a related-party transaction.

(b) A qualified biomass conversion facility that meets the requirements of paragraph (a) of this section may be considered an eligible material owner if it otherwise meets the definition in this part.

### § 1450.103 Eligible material.

(a) In order to be eligible for a matching payment, an eligible material owner must have harvested or collected eligible material that was delivered to a qualified biomass conversion facility.

(b) Eligible material must be a renewable biomass that, at a minimum, meets the definition in § 1450.3 or is listed as an eligible material on *http://www.fsa.usda.gov/energy.*

(c) Matching payments are not authorized for:

(1) Any eligible material delivered before [DATE OF PUBLICATION OF THE FINAL RULE IN THE *FEDERAL REGISTER*].

(2) Any eligible material for which payment is received before the application for payment is received and approved by the county FSA office, in accordance with § 1450.104 of this part.

(3) Eligible material delivered to a qualified Biomass Conversion facility used to produce black liquor, an industrial waste by-product of the pulp and kraft paper manufacturing process which consists primarily of inorganic chemicals used in the pulping process, lignin, hemicellulose, and cellulose. In addition, black liquor is not an eligible material.

### § 1450.104 Signup.

(a) Applications for matching payments will be accepted on a continuous basis.

(b) An eligible material owner must apply for matching payments at the FSA county office before payment for the eligible material from a qualified biomass conversion facility is received. "The request must be submitted and approved by CCC before any payment is made by the facility for the eligible material."

(c) Applications must include the following estimates based on information obtained from contracts, agreements, or letters of intent:

(1) An estimate of the total dry tons of eligible material expected to be sold to a qualified biomass conversion facility;

(2) The type(s) of eligible material that is expected to be sold;

(3) The name of the qualified biomass conversion facility that will purchase the eligible material;

(4) The expected per dry ton price the owner plans to receive for the delivery of the eligible material; and

(5) The date or dates the eligible material is expected to be delivered to the facility.

(d) Eligible material owners who deliver eligible material to more than one qualified biomass conversion facility must submit separate applications for each facility to which eligible material will be delivered.

(e) After delivery, eligible material owners must notify CCC and request the matching payment. Matching payments will be disbursed only after delivery is verified by FSA.

(f) Other information that must be submitted to FSA in order to receive matching payments includes settlement, summary, or other acceptable data that provide the:

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using standard moisture determinations applicable to the eligible material;

(2) Total payment received, including the per-ton payment rate(s) matched with actual and dry weight tonnage delivered; and

(3) Qualified biomass conversion facility's certification as to the authenticity of the information.

**§ 1450.105 Obligations of participant.**

(a) All participants whose BCAP matching payment application was approved must agree to:

(1) Carry out the terms and conditions of such BCAP matching payment application; and

(2) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP contract and this part.

(b) [Reserved]

**§ 1450.106 Payments.**

**Option 1 for § 1450.106**

(a) Payments under this subpart will be for a term not to exceed two years beginning the date that the first matching payment to a person or entity is issued by CCC.

(b) Payments under this subpart will be paid at a rate of $1 for each $1 per ton received from a qualified biomass conversion facility for the commercial sale of eligible materials used to produce anything other than cellulosic ethanol (heat, power, or biobased products) in an amount up to $16 per ton.

(c) Payments under this subpart will be paid at a rate of $1 for each $1 per ton received from a qualified biomass conversion facility for the commercial sale of materials used to produce cellulosic ethanol in an amount up to $45 per ton.

**Option 2 for § 1450.106**

(a) Payments under this subpart will be for a term not to exceed two years beginning the date that the first matching payment to a person or entity is issued by CCC.

(b) Payments under this subpart will be paid at a rate of $1 for each $1 per ton received from a qualified biomass conversion facility for the commercial sale of eligible material in an amount up to $45 per ton.

(c) For those biomass conversion facilities converting vegetative waste materials, such as wood waste and wood residues, to heat or power consumed by the facility, no payments may be made under this subpart for material unless the material is converted to heat or power above that facility's historical baseline for heat or power production from renewable biomass as established by the Deputy Administrator.

**Option 3 for § 1450.106**

(a) Payments under this subpart will be for a term not to exceed two years beginning the date that the first matching payment to a person or entity is issued by CCC.

(b) Payments under this subpart will be paid at a rate of $1 for each $1 per ton received from a qualified biomass conversion facility for the commercial sale of eligible material in an amount up to $45 per ton to facilities that:

(1) Fully convert from fossil fuel consumption to renewable biomass feedstocks;

(2) For eligible material showing exceptional promise for producing innovative advanced biofuels, renewable energy, or biobased products; or

(3) For every ton of renewable biomass consumption above a facility's established historical baseline.

(c) Payments under this subpart will be paid at a rate of $1 for each $1 per ton received from a qualified biomass conversion facility for the commercial sale of eligible material in an amount up to $16 per ton for those facilities that do not increase renewable biomass consumption over a historical baseline.

**§§ 1450.107–1450.199 [Reserved]**

## Subpart C—Establishment and Annual Payments

**§ 1450.200 General description.**

As provided in this subpart, "establishment and annual payments" may be provided by CCC to producers of eligible crops in a project area.

**§ 1450.201 Project area submission requirements.**

(a) To be considered for selection as a project area, a project sponsor must submit a proposal to CCC that includes, at a minimum:

(1) A description of the eligible land and eligible crops of each producer that will participate in the proposed project area;

(2) A letter of commitment from a biomass conversion facility stating that the facility will use, for BCAP purposes, eligible crops intended to be produced in the proposed project area;

(3) Evidence that the biomass conversion facility has sufficient equity available to operate if the facility is not operational at the time the project area proposal is submitted; and

(4) Other information that gives CCC a reasonable assurance that the biomass conversion facility will be in operation by the time that the eligible crops are ready for harvest.

(b) The project area description required in paragraph (a) of this section needs to specify geographic boundaries and be described in definite terms such as acres, watershed boundaries, mapped longitude and latitude coordinates, or counties.

(c) The project area needs to be physically located near a biomass conversion facility or facilities.

(d) Project area proposals may limit the nature and types of eligible crops to be planted within a project area.

**§ 1450.202 Project area selection criteria.**

In selecting project areas, CCC will consider:

(a) The dry tons of the eligible crops proposed to be produced in the proposed project area and the probability that such crops will be used for BCAP purposes;

(b) The dry tons of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(c) The anticipated economic impact in the proposed project area;

(d) The opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed project area;

(e) The participation rate by beginning or socially disadvantaged farmers or ranchers;

(f) The impact on soil, water, and related resources;

(g) The variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices, and monoculture and polyculture crop mixes;

(h) The range of eligible crops among project areas; and

(i) Any other additional criteria, as determined by CCC.

**§ 1450.203 Eligible persons and legal entities.**

(a) In order to be eligible to enter into a BCAP contract in accordance with this subpart, a person or legal entity must be an owner, operator, or tenant of eligible land, as defined in § 1450.204.

(b) [Reserved]

**§ 1450.204 Eligible land.**

(a) For the purposes of this subpart, eligible land means agricultural land including cropland, grassland, pastureland, rangeland, hayland, or other lands on which food, fiber, or other agricultural products are produced or capable of being produced, or nonindustrial private forest lands.

(b) For the purposes of this subpart, eligible land is not:

(1) Federal- or State-owned land;

(2) Land that is native sod as of [DATE OF PUBLICATION OF THE

FINAL RULE IN THE *FEDERAL REGISTER];*

(3) Land enrolled in the conservation reserve program authorized under the regulations at part 1410 of this chapter;

(4) Land enrolled in the wetlands reserve program authorized under the regulations at part 1467 of this chapter; or

(5) Land enrolled in the grassland reserve program authorized under the regulations at part 1415 of this chapter.

**§ 1450.205 Duration of contracts.**

(a) Contracts under this subpart will be for a term of up to:

(1) 5 years for annual and non-woody perennial crops; and

(2) 15 years for woody perennial crops.

(b) The establishment time period may vary due to: Type of crop, agronomic conditions (establishment time frame, winter hardiness, *etc*), and other factors.

**§ 1450.206 Obligations of participant.**

(a) All participants subject to a BCAP contract must:

(1) Carry out the terms and conditions of such BCAP contract;

(2) Make available to CCC or to an institution of higher education or other entity designated by CCC, such information as CCC determines to be appropriate to promote the production of eligible crops and the development of biomass conversion technology;

(3) Comply with the highly erodible land and wetland conservation requirements of part 12 of this chapter;

(4) Implement a:

(i) Conservation plan or

(ii) Forest stewardship plan or an equivalent plan.

(5) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan, unless both:

(i) The Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the producer's control, and

(ii) CCC agrees to a modified plan.

(6) The producer will demonstrate compliance with the conservation or forest stewardship plan through required self certification and FSA will spot check compliance with the plans.

(7) Establish temporary vegetative cover either within the timeframes required by the conservation plan or as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established; and

(8) If the participant has a share of the payment greater than zero, be jointly and severally responsible with the other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP contract and this part.

(b) Under the proposed rule, payments may cease and producers may be subject to contract termination for failure to plant eligible crops.

(c) A contract will not be terminated for failure by the participant to establish an approved cover on the land if, as determined by the Deputy Administrator:

(1) The failure to plant or establish such cover was due to excessive rainfall, flooding, or drought; and

(2) The land on which the participant was unable to plant or establish such cover is planted or established to such cover as soon as practicable after the wet or drought conditions that prevented the planting or establishment subside.

**§ 1450.207 Conservation plans and forest stewardship plans.**

(a) The producer must implement a conservation plan, forest stewardship plan or equivalent plan that complies with CCC guidelines and is approved by the appropriate conservation district for the land to be entered in BCAP. If the conservation district declines to review the conservation plan, or disapproves the conservation plan, such approval may be waived by CCC.

(b) The practices and management activities included in a conservation plan, forest stewardship plan or equivalent plan, and agreed to by the producer, must be implemented in a cost-effective manner that meets BCAP goals and purposes.

(c) If applicable, a tree planting plan must be developed and included in the conservation plan, forest stewardship plan or equivalent plan. Such tree planting plan may allow a reasonable time to complete plantings, as determined by CCC.

(d) All conservation plans, forest stewardship plans or equivalent plans, and revisions of such plans, will be subject to approval by CCC.

**§ 1450.208 Eligible practices.**

Eligible practices are those practices specified in the conservation or forestry plan that meet all standards needed to cost-effectively establish:

(a) Annual crops;

(b) Non-woody perennial crops; and

(c) Woody perennial crops.

**§ 1450.209 Signup.**

(a) Offers for contracts may be submitted on a continuous basis to FSA as determined by the Deputy Administrator.

(b) [Reserved]

**§ 1450.210 Acceptability of offers.**

(a) Acceptance or rejection of any contract offered will be at the sole discretion of CCC, and offers may be rejected for any reason as determined to accomplish the goals of the program.

(b) An offer to enroll land in BCAP will be irrevocable for such period as is determined and announced by CCC. The producer will be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

**§ 1450.211 BCAP contract.**

(a) In order to enroll land in BCAP, the participant must enter into a contract with CCC.

(b) The BCAP contract is comprised of:

(1) The terms and conditions for participation in BCAP;

(2) The conservation plan, forest stewardship plan or equivalent plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a BCAP contract, the producer must submit an offer to participate as specified in § 1450.209;

(d) The BCAP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the eligible land to be placed in the BCAP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve BCAP contracts on behalf of CCC.

(f) CCC will honor BCAP contracts even in the event that a project area biomass conversion facility does not become fully or partially operational.

(g) BCAP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of

CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) The BCAP practice fails or is not established after a certain time period, as determined by the Deputy Administrator, and the cost of restoring the practice outweighs the benefits received from the restoration;

(5) The BCAP contract was approved based on erroneous eligibility determinations; or

(6) CCC determines that such a termination is needed in the public interest.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in BCAP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest, as determined by CCC, and must pay liquidated damages as provided for in the contract and this part. CCC may permit the amount(s) to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the BCAP contract when the land is purchased by or for the United States, as determined appropriate by CCC.

**§ 1450.212 Establishment payments.**

(a) Establishment payments will be made available upon a determination by CCC that an eligible practice, or an identifiable portion of a practice, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, such payments will be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, such payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Establishment payments may be authorized for the replacement or restoration of practices on land for which assistance has been previously allowed under BCAP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant, as determined by the CCC.

(e) In addition, CCC may make partial payments when the producer completes identifiable components of the contract. CCC may make supplemental establishment payments, if necessary.

**§ 1450.213 Levels and rates for cost-share payments.**

(a) CCC will pay not more than 75 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the BCAP conservation or forestry plan.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator. The calculated 75 percent of the average cost may represent less than 75 percent of the actual cost for an individual participant.

(c) Except as otherwise provided for in this part, a participant may receive, in addition to any payment under this part, cost-share assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in BCAP without a commensurate reduction in BCAP payments.

**§ 1450.214 Annual payments.**

(a) Annual payments will be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the BCAP contract.

(b) Based on the regulations at § 1410.42 of this chapter and as determined by CCC, annual payments include a payment based on:

(i) A weighted average soil rental rate for cropland;

(ii) The applicable marginal pastureland rental rate for all other land except for non-industrial private forest land; and

(iii) For forest land, the average county rental rate for cropland as adjusted for forestland productivity for non-industrial private forest land.

(c) The annual payment will be divided among the participants on a single contract as agreed to in such contract, as determined by CCC.

(d) A participant that has an established eligible crop and is therefore not eligible for establishment payments under § 1450.213 may be eligible for annual payments under the provisions of this section.

(e) In the case of a contract succession, annual payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual payments will be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) Annual payments will be reduced:

(1) By 25 percent if an eligible crop is delivered to the biomass conversion facility; or

(2) On a dollar-for-dollar basis if:

(i) An eligible crop is used for a purpose other than the production of energy at the biomass conversion facility;

(ii) The producer receives a matching payment under subpart B of this part;

(iii) The producer violates a term of the contract; or

(iv) Other circumstances necessary to carry out BCAP, as determined by CCC.

**§ 1450.215 Transfer of land.**

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a BCAP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new BCAP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator will assume all obligations of the BCAP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a BCAP contract with CCC, then, except as otherwise determined by the Deputy Administrator:

(i) Cost-share payments will be made to the past or present participant who established the practice; and

(ii) Annual payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in § 1450.214(c).

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a BCAP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, or such other time as the Deputy Administrator determines to be appropriate, such contract will be

terminated with respect to the affected portion of such land, and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Must refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator. The provisions of § 1450.211(g) will apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains BCAP contract acreage cannot be a party to the contract by succession. However, through an addendum to the BCAP contract, if the current operator of the property is one of the contract participants, the contract may remain in effect and, as permitted by CCC, such operator may continue to receive payments under such contract if:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such Federal agency.

Signed at Washington, DC, on February 2, 2010.

**Jonathan W. Coppess,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

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Federal Register

**Monday,**

**February 8, 2010**

## Part III

# Securities and Exchange Commission

**17 CFR Parts 211, 231 and 241**

**Commission Guidance Regarding Disclosure Related to Climate Change; Final Rule**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 211, 231 and 241

**[Release Nos. 33–9106; 34–61469; FR–82]**

## Commission Guidance Regarding Disclosure Related to Climate Change

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission ("SEC" or "Commission") is publishing this interpretive release to provide guidance to public companies regarding the Commission's existing disclosure requirements as they apply to climate change matters.

**DATES:** *Effective Date:* February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. For general questions about this release, contact James R. Budge at (202) 551–3115 or Michael E. McTiernan, Office of Chief Counsel at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose of Interpretive Guidance

#### *A. Introduction*

Climate change has become a topic of intense public discussion in recent years. Scientists, government leaders, legislators, regulators, businesses, including insurance companies, investors, analysts and the public at large have expressed heightened interest in climate change. International accords, federal regulations, and state and local laws and regulations in the U.S. address concerns about the effects of greenhouse gas emissions on our environment,[1] and international efforts to address the concerns on a global basis continue.[2] The Environmental Protection Agency is taking action to address climate change concerns,[3] and Congress is considering climate change legislation.[4] Some business leaders are increasingly recognizing the current and potential effects on their companies' performance and operations, both positive and negative, that are associated with climate change and with efforts to reduce greenhouse gas emissions.[5] Many companies are providing information to their peers and to the public about their carbon footprints and their efforts to reduce them.[6]

This release outlines our views with respect to our existing disclosure requirements as they apply to climate change matters. This guidance is intended to assist companies in satisfying their disclosure obligations under the federal securities laws and regulations.

#### *B. Background*

##### 1. Recent Regulatory, Legislative and Other Developments

In the last several years, a number of state and local governments have enacted legislation and regulations that result in greater regulation of greenhouse gas emissions.[7] Climate change related legislation is currently pending in Congress. The House of Representatives has approved one version of a bill,[8] and a similar bill was introduced in the Senate in the fall of 2009.[9] This legislation, if enacted, would limit and reduce greenhouse gas emissions through a "cap and trade" system of allowances and credits, among other provisions.

The Environmental Protection Agency has been taking steps to regulate greenhouse gas emissions. On January 1, 2010, the EPA began, for the first time, to require large emitters of greenhouse gases to collect and report data with respect to their greenhouse gas emissions.[10] This reporting requirement is expected to cover 85% of the nation's greenhouse gas emissions generated by roughly 10,000 facilities.[11] In December 2009, the EPA issued an "endangerment and cause or contribute finding" for greenhouse gases under the Clean Air Act, which will allow the EPA to craft rules that directly regulate greenhouse gas emissions.[12]

Some members of the international community also have taken actions to address climate change issues on a global basis, and those actions can have a material impact on companies that report with the Commission. One such effort in the 1990s resulted in the Kyoto Protocol. Although the United States has never ratified the Kyoto Protocol, many registrants have operations outside of the United States that are subject to its standards.[13] Another important international regulatory system is the European Union Emissions Trading System (EU ETS), which was launched as an international

[1] For a listing of state and local government laws and regulations in this field, *see http://www.epa.gov/climatechange/wycd/stateandlocalgov/index.html*. Two significant international accords related to this topic are the Kyoto Protocol, which was adopted in Kyoto, Japan, on December 11, 1997 and became effective on February 16, 2005, and the European Union Emissions Trading System (EU ETS), which was launched as an international "cap and trade" system of allowances for emitting carbon dioxide and other greenhouse gases, built on the mechanisms set up under the Kyoto Protocol. *See http://unfccc.int/kyoto_protocol/items/2830.php* and *http://ec.europa.eu/environment/climat/pdf/brochures/ets_en.pdf* for a more detailed discussion of the Kyoto Protocol and EU ETS, respectively.

[2] For example, in December 2009, Copenhagen, Denmark hosted the United Nations Climate Change Conference.

[3] *See e.g.*, Current and Near-Term Greenhouse Gas Reduction Initiatives, available at *http://www.epa.gov/climatechange/policy/neartermghgreduction.html*, for a discussion of EPA initiatives as well as other federal initiatives.

[4] *See e.g.*, American Clean Energy and Security Act of 2009, H.R. 2454, 111th Cong., 1st Sess. (2009), passed by the House of Representatives on June 26, 2009, and Clean Energy Jobs and American Power Act of 2009, S. 1733, 111th Cong., 1st Session (2009), introduced in the Senate September 30, 2009.

[5] *See* Appendix F to the Petition for Interpretive Guidance on Climate Risk Disclosure submitted September 18, 2007, File No. 4–547, for a sampling of comments by business leaders relating to climate change regulation and disclosure, available at *http://www.sec.gov/rules/petitions/2007/petn4-547.pdf*.

[6] Companies are assessing and reporting on their greenhouse gas emissions and other climate change related matters using standards and guidelines promulgated by organizations with specific expertise in the field. Three such organizations are the Climate Registry, the Carbon Disclosure Project and the Global Reporting Initiative. We discuss this in more detail below.

[7] For example, in California, the Global Warming Solutions Act of 2006 and regulatory actions by the California Air Resources Board have resulted in restrictions on greenhouse gas emissions. In addition, state and regional programs, such as the Regional Greenhouse Gas Initiative (including ten Northeast and Mid-Atlantic states), the Western Climate Initiative (including seven Western states and four Canadian provinces) and the Midwestern Greenhouse Gas Reduction Accord (including six states and one Canadian province) have been developed to restrict greenhouse gas emissions. For a more detailed list of state action on climate change, *see* Pew Center on Global Climate Change, States News (available at *http://www.pewclimate.org/states-regions/news?page=1*).

[8] *See* American Clean Energy and Security Act of 2009.

[9] *See* Clean Energy Jobs and American Power Act of 2009.

[10] *See* Mandatory Reporting of Greenhouse Gases, Docket No. EPA–HQ–OAR–2008–0508, 74 FR 56260 (October 30, 2009).

[11] *See* EPA Press Release "EPA Finalizes the Nation's First Greenhouse Gas Reporting System/Monitoring to begin in 2010" dated September 22, 2009, available at *http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/194e412153fcffea8525763900530d75!OpenDocument*.

[12] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Docket ID No. EPA–HQ–OAR–2009–0171, 74 FR 66496 (December 15, 2009). The Clean Air Act is found in 42 U.S.C. ch. 85.

[13] One of the major features of the Kyoto Protocol is that it sets binding targets for industrialized countries for reducing greenhouse gas emissions. These amount to an average of five per cent against 1990 levels over the five-year period 2008–2012.

"cap and trade" system of allowances for emitting carbon dioxide and other greenhouse gases, based on mechanisms set up under the Kyoto Protocol.[14] In addition, the United States government is participating in ongoing discussions with other nations, including the recent United Nations Climate Conference in Copenhagen, which may lead to future international treaties focused on remedying environmental damage caused by greenhouse gas emissions. Those accords ultimately could have a material impact on registrants that file disclosure documents with the Commission.[15]

The insurance industry is already adjusting to these developments. A 2008 study listed climate change as the number one risk facing the insurance industry.[16] Reflecting this assessment, the National Association of Insurance Commissioners recently promulgated a uniform standard for mandatory disclosure by insurance companies to state regulators of financial risks due to climate change and actions taken to mitigate them.[17] We understand that insurance companies are developing new actuarial models and designing new products to reshape coverage for green buildings, renewable energy, carbon risk management and directors' and officers' liability, among other actions.[18]

2. Potential Impact of Climate Change Related Matters on Public Companies

For some companies, the regulatory, legislative and other developments noted above could have a significant effect on operating and financial decisions, including those involving capital expenditures to reduce emissions and, for companies subject to "cap and trade" laws, expenses related to purchasing allowances where reduction targets cannot be met. Companies that may not be directly affected by such developments could nonetheless be indirectly affected by changing prices for goods or services provided by companies that are directly affected and that seek to reflect some or all of their changes in costs of goods in the prices they charge. For example, if a supplier's costs increase, that could have a significant impact on its customers if those costs are passed through, resulting in higher prices for customers. New trading markets for emission credits related to "cap and trade" programs that might be established under pending legislation, if adopted, could present new opportunities for investment. These markets also could allow companies that have more allowances than they need, or that can earn offset credits through their businesses, to raise revenue through selling these instruments into those markets. Some companies might suffer financially if these or similar bills are enacted by the Congress while others could benefit by taking advantage of new business opportunities.

In addition to legislative, regulatory, business and market impacts related to climate change, there may be significant physical effects of climate change that have the potential to have a material effect on a registrant's business and operations. These effects can impact a registrant's personnel, physical assets, supply chain and distribution chain. They can include the impact of changes in weather patterns, such as increases in storm intensity, sea-level rise, melting of permafrost and temperature extremes on facilities or operations. Changes in the availability or quality of water, or other natural resources on which the registrant's business depends, or damage to facilities or decreased efficiency of equipment can have material effects on companies.[19] Physical changes associated with climate change can decrease consumer demand for products or services; for example, warmer temperatures could reduce demand for residential and commercial heating fuels, service and equipment.

For some registrants, financial risks associated with climate change may arise from physical risks to entities other than the registrant itself. For example, climate change-related physical changes and hazards to coastal property can pose credit risks for banks whose borrowers are located in at-risk areas. Companies also may be dependent on suppliers that are impacted by climate change, such as companies that purchase agricultural products from farms adversely affected by droughts or floods.

3. Current Sources of Climate Change Related Disclosures Regarding Public Companies

There have been increasing calls for climate-related disclosures by shareholders of public companies. This is reflected in the several petitions for interpretive advice submitted by large institutional investors and other investor groups.[20] The New York

[14] *See* n. 1, *supra*.

[15] The terms of the Kyoto Protocol are set to expire in 2012. Ongoing international discussions, including the United Nations Climate Change Conference held in Copenhagen, Denmark in mid-December 2009, are intended to further develop a framework to carry on international greenhouse gas emission reduction standards beyond 2012.

[16] *Strategic business risk 2008—Insurance*, a report prepared by Ernst & Young and Oxford Analytica. *See* Ernst & Young press release dated March 12, 2008, available at *http://www.ey.com/GL/en/Newsroom/News-releases/Media_Press-Release_Strategic-Risk-to-Insurance-Industry*.

[17] On March 17, 2009, the NAIC adopted a mandatory requirement that insurance companies disclose to regulators the financial risks they face from climate change, as well as actions the companies are taking to respond to those risks. All insurance companies with annual premiums of $500 million or more will be required to complete an Insurer Climate Risk Disclosure Survey every year, with an initial reporting deadline of May 1, 2010. The surveys must be submitted in the state where the insurance company is domesticated. *See Insurance Regulators Adopt Climate Change Risk Disclosure*, available at *www.naic.org/Releases/2009_docs/climate_change_risk_disclosure_adopted.htm*.

[18] *See* Klein, Christopher, *Climate Change, Part IV: (Re)insurance Industry response*, May 28, 2009, available at *www.gccapitalideas.com/2009/05/28/climate-change-part-iv-reinsurance-industry-response*.

[19] For one view of the anticipated business-related physical risks resulting from climate change, *see Industry Update: Global Warming & the Insurance Industry—Will Insurers Be Burned by the Climate Change Phenomenon?*, available at *http://www.aon.com/about-aon/intellectual-capital/attachments/risk-services/will_insurers_be_burned_by_the_climate_change_phenomenon.pdf*. Another example of how physical risks attributable to climate change are changing business and risk assessments is the Federal Emergency Management Agency's plan to update its risk mapping, assessment and planning to better reflect the effects of climate change, such as changing rainfall data, and hurricane patterns and intensities. *See* "Risk Mapping, Assessment, and Planning (Risk MAP): Fiscal Year 2009 Flood Mapping Production Plan," Version 1, May 2009, available at *http://www.fema.gov/library/viewRecord.do?id=3680*.

[20] *See* Petition for Interpretive Guidance on Climate Risk Disclosures, dated September 19, 2007, File No. 4-547, available at *http://www.sec.gov/rules/petitions/2007/petn4-547.pdf*; supplemental petition dated June 12, 2008, available at *http://www.sec.gov/rules/petitions/2008/petn4-547-supp.pdf*; second supplemental petition dated November 23, 2009, available at *http://www.sec.gov/rules/petitions/2009/petn4-547-supp.pdf*. For other petitions on point, *see also* Petition for Interpretive Guidance on Business Risk of Global Warming Regulation, submitted on behalf of the Free Enterprise Action Fund on October 22, 2007, File Number 4–549, available at *http://www.sec.gov/rules/petitions/2007/petn4-549.pdf*. One petition urges the Commission to issue guidance warning companies not to include information on climate change that may be false and misleading; *see* Petition for Interpretive Guidance on Public Statements Concerning Global Warming and Other Environmental Issues, submitted on behalf of the Free Enterprise Action Fund on July 21, 2008, File No. 4-563, available at *http://www.sec.gov/rules/petitions/2008/petn4-563.pdf*. While not a formal petition, Ceres has provided the Commission with the results of a study it commissioned in conjunction with the Environmental Defense Fund regarding climate risk disclosure in SEC filings and suggests that the Commission issue guidance on this topic. *See* Climate Risk Disclosure in SEC Filings: An Analysis of 10–K Reporting by Oil and Gas, Insurance, Coal, and Transportation and Electric Power Companies, June 2009, available at *http://www.ceres.org/Document.Doc?id=473*.

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Attorney General's Office recently has entered into settlement agreements with three energy companies under its investigation regarding their disclosures about their greenhouse gas emissions and potential liabilities to the companies resulting from climate change and related regulation. The companies agreed in the settlement agreements to enhance their disclosures relating to climate change and greenhouse gas emissions in their annual reports filed with the Commission.[21]

Although some information relating to greenhouse gas emissions and climate change is disclosed in SEC filings,[22] much more information is publicly available outside of public company disclosure documents filed with the SEC as a result of voluntary disclosure initiatives or other regulatory requirements. For example, in addition to the disclosure requirements mandated in several states [23] and the disclosure that the EPA began requiring at the start of 2010, The Climate Registry provides standards for and access to climate-related information. The Registry is a non-profit collaboration among North American states, provinces, territories and native sovereign nations that sets standards to calculate, verify and publicly report greenhouse gas emissions into a single public registry. The Registry supports both voluntary and state-mandated reporting programs and provides data regarding greenhouse gas emissions.[24]

The Carbon Disclosure Project collects and distributes climate change information, both quantitative (emissions amounts) and qualitative (risks and opportunities), on behalf of 475 institutional investors.[25] Over 2500 companies globally reported to the Carbon Disclosure Project in 2009; over 500 of those companies were U.S. companies. Sixty-eight percent of the companies that responded to the Carbon Disclosure Project's investor requests for information made their reports available to the public.[26]

The Global Reporting Initiative has developed a widely used sustainability reporting framework.[27] That framework is developed by GRI participants drawn from business, labor and professional institutions worldwide. The GRI framework sets out principles and indicators that organizations can use to measure and report their economic, environmental, and social performance, including issues involving climate change. Sustainability reports based on the GRI framework are used to benchmark performance with respect to laws, norms, codes, performance standards and voluntary initiatives, demonstrate organizational commitment to sustainable development, and compare organizational performance over time.

These and other reporting mechanisms can provide important information to investors outside of disclosure documents filed with the Commission. Although much of this reporting is provided voluntarily, registrants should be aware that some of the information they may be reporting pursuant to these mechanisms also may be required to be disclosed in filings made with the Commission pursuant to existing disclosure requirements.

## II. Historical Background of SEC Environmental Disclosure

The Commission first addressed disclosure of material environmental issues in the early 1970s. The Commission issued an interpretive release stating that registrants should consider disclosing in their SEC filings the financial impact of compliance with environmental laws, based on the materiality of the information.[28] Throughout the 1970s, the Commission continued to explore the need for specific rules mandating disclosure of information relating to litigation and other business costs arising out of compliance with federal, state and local laws that regulate the discharge of materials into the environment or otherwise relate to the protection of the environment. These topics were the subject of several rulemaking efforts, extensive litigation, and public hearings, all of which resulted in the rules that now specifically address disclosure of environmental issues.[29] The Commission adopted these rules, which we discuss below, in final and current form in 1982, after a decade of evaluation and experience with the subject matter.[30]

Earlier, beginning in 1968, we began to develop and fine-tune our requirements for management to discuss and analyze their company's financial condition and results of operations in disclosure documents filed with the Commission.[31] During the 1970s and 1980s, materiality standards for disclosure under the federal securities laws also were more fully articulated.[32] Those standards provide that

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Housing, and Urban Development held a hearing on corporate disclosure of climate-related issues on October 31, 2007; representatives of signatories to the September 19, 2007 petition, among others, testified in that hearing. *See* "Climate Disclosure: Measuring Financial Risks and Opportunities," available at *http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=ed7a4968-1019-411d-9a22-c193c6b689ea*. Following the hearing, Senators Christopher Dodd and Jack Reed wrote to Chairman Christopher Cox urging the Commission to issue guidance regarding climate disclosure. *See http://dodd.senate.gov/multimedia/2007/120607_CoxLetter.pdf*.

[21] For information about the settlement agreements, *see* the New York Attorney General's Office press releases relating to: Xcel Energy, available at *http://www.oag.state.ny.us/media_center/2008/aug/aug27a_08.html*; Dynegy Inc., available at *http://www.oag.state.ny.us/media_center/2008/oct/oct23a_08.html*; and AES Corporation, available at *http://www.oag.state.ny.us/media_center/2009/nov/nov19a_09.html*.

[22] For example, in the electric utility industry, we have been informed by the Edison Electric Institute that 95% of the member companies it recently surveyed reported that they included at least some disclosure related to greenhouse gas emissions in their SEC filings, with 34% discussing quantities of greenhouse gases emitted and 23% discussing costs of climate-related compliance. Registrants include this type of disclosure in the risk factors, business description, legal proceedings, executive compensation, MD&A and financial statements sections of their annual reports. The Edison Electric Institute is an association of U.S. shareholder-owned electric companies. Their members serve 95 percent of the customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. The EEI also has more than 80 international electric companies as affiliate members, and nearly 200 industry suppliers and related organizations as associate members. The EEI described the results of its survey in a presentation to staff members of the Division of Corporation Finance.

[23] State requirements include $CO_2$ emissions disclosure requirements for electricity providers, greenhouse gas registries for reporting of entity emissions levels and emissions changes, and required reporting of greenhouse gas emissions. For a discussion of specific state requirements, *see http://epa.gov/climatechange/wycd/stateandlocalgov/state_reporting.html*.

[24] The Climate Registry's Web site is at www.theclimateregistry.org. Reports are publicly available through their Web site at no charge. *See http://www.theclimateregistry.org/resources/climate-registry-information-system-cris/public-reports/*.

[25] The Carbon Disclosure Project's Web site is at *http://www.cdproject.net*.

[26] These figures were provided to the Commission staff by representatives of the Carbon Disclosure Project.

[27] The GRI's Web site is at *http://www.globalreporting.org*.

[28] Release No. 33–5170 (July 19, 1971) [36 FR 13989].

[29] *See* Interpretive Release No. 33–6130 (September 27, 1979) [44 FR 56924] (the "1979 Release"), which includes a brief summary of the legal and administrative actions taken with regard to environmental disclosure during the 1970s. More information relating to the Commission's efforts in this area is chronicled in Release No. 33–6315 (May 4, 1981) [46 FR 25638].

[30] Release No. 33–6383 (March 3, 1982) [47 FR 11380].

[31] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427] (the "1989 Release") and Release No. 33–8350 (December 19, 2003) [68 FR 75055] (the "2003 Release") for detailed histories of Commission releases that outline the background of, and interpret, our MD&A rules.

[32] *See TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438 (1976) (adopting a standard for materiality in connection with proxy statement disclosures supported by the Commission, *see id.* at n. 10) and *Basic Inc.* v. *Levinson*, 485 U.S. 224 (1988).

information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision, or, put another way, if the information would alter the total mix of available information.[33] In the articulation of the materiality standards, it was recognized that doubts as to materiality of information would be commonplace, but that, particularly in view of the prophylactic purpose of the securities laws and the fact that disclosure is within management's control, "it is appropriate that these doubts be resolved in favor of those the statute is designed to protect."[34] With these developments, registrants had clearer guidance about what they should disclose in their filings.

More recently, the Commission reviewed its full disclosure program relating to environmental disclosures in SEC filings in connection with a Government Accountability Office review.[35] The Commission also has had the opportunity to consider the thoughtful suggestions that many organizations have provided us recently about how the Commission could direct registrants to enhance their disclosure about climate change related matters.[36]

## III. Overview of Rules Requiring Disclosure of Climate Change Issues

When a registrant is required to file a disclosure document with the Commission, the requisite form will largely refer to the disclosure requirements of Regulation S–K[37] and Regulation S–X.[38] Securities Act Rule 408 and Exchange Act Rule 12b–20 require a registrant to disclose, in addition to the information expressly required by Commission regulation, "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."[39] In this section, we briefly describe the most pertinent non-financial statement disclosure rules that may require disclosure related to climate change; in the following section, we discuss their application to disclosure of certain specific climate change related matters.

### *A. Description of Business*

Item 101 of Regulation S–K requires a registrant to describe its business and that of its subsidiaries. The Item lists a variety of topics that a registrant must address in its disclosure documents, including disclosure about its form of organization, principal products and services, major customers, and competitive conditions. The disclosure requirements cover the registrant and, in many cases, each reportable segment about which financial information is presented in the financial statements. If the information is material to individual segments of the business, a registrant must identify the affected segments.

Item 101 expressly requires disclosure regarding certain costs of complying with environmental laws.[40] In particular, Item 101(c)(1)(xii) states:

> Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem material.[41]

A registrant meeting the definition of "smaller reporting company" may satisfy its disclosure obligation by providing information called for by Item 101(h). Item 101(h)(4)(xi) requires disclosure of the "costs and effects of compliance with environmental laws (federal, state and local)."[42]

### *B. Legal Proceedings*

Item 103 of Regulation S–K[43] requires a registrant to briefly describe any material pending legal proceeding to which it or any of its subsidiaries is a party. A registrant also must describe material pending legal actions in which its property is the subject of the litigation.[44] If a registrant is aware of similar actions contemplated by governmental authorities, Item 103 requires disclosure of those proceedings as well. A registrant need not disclose ordinary routine litigation incidental to its business or other types of proceedings when the amount in controversy is below thresholds designated in this Item.

Instruction 5 to Item 103 provides some specific requirements that apply to disclosure of certain environmental litigation.[45] Instruction 5 states:

> Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:
>
> (A) Such proceeding is material to the business or financial condition of the registrant;

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[33] *Basic* at 231, quoting *TSC Industries* at 449.

[34] *TSC Industries* at 448.

[35] "Environmental Disclosure: SEC Should Explore Ways to Improve Tracking and Transparency of Information," United States Government Accountability Office Report to Congressional Requesters, GAO–04–808 (July 2004). Eleven years before, at the request of the Chairman of the House Committee on Energy and Commerce, the GAO had prepared a report relating to environmental liability disclosure involving property and casualty insurers and Superfund cleanup costs. *See* "Environmental Liability: Property and Casualty Insurer Disclosure of Environmental Liabilities," GAO/RCED–93–108 (June 1993), available at *http://74.125.93.132/search?q=cache:tWeHLDHoIcUJ:www.gao.gov/cgi-bin/getrpt%3FGAO/RCED-93-108+GAO/RCED-93-108&cd=1&hl=en&ct=clnk&gl=us*.

[36] *See* n. 20, *supra*.

[37] 17 CFR Part 229.

[38] 17 CFR Part 210.

[39] 17 CFR 230.408 and 17 CFR 240.12b–20.

[40] The Commission first addressed disclosure of material costs and other effects on business resulting from compliance with existing environmental law in its first environmental disclosure interpretive release in 1971. *See* Release 33–5170 (July 19, 1971) [36 FR 13989]. The Commission codified that interpretive position in the disclosure forms two years later. *See* Release 33–5386 (April 20, 1973) [38 FR 12100]. The Commission provided additional interpretive guidance in the 1979 Release. With some adjustments to reflect experience with the subject matter, the requirements were moved to Item 101 in 1982, and they have not changed since that time. *See* Release No. 33–6383 (March 3, 1982) [47 FR 11380].

[41] 17 CFR 229.101(c)(1)(xii).

[42] 17 CFR 229.101(h)(4)(xi).

[43] 17 CFR 229.103.

[44] *Id.*

[45] Instruction 5 in its current form was the product of the Commission's experience with environmental litigation disclosure. In 1973, we added provisions to the legal proceedings requirements of various disclosure forms singling out legal actions involving environmental matters. *See* Release No. 33–5386 (Apr. 20, 1973) [38 FR 12100]. The new rules required disclosure of any pending legal proceeding arising under environmental laws if a governmental entity was involved in the proceeding, and any other legal proceeding arising under environmental laws unless it was not material, or if in a civil suit for damages, unless it involved less than 10% of the current assets of the registrant on a consolidated basis. The Commission provided additional interpretive guidance regarding environmental litigation in the 1979 Release. When the Commission, in connection with its development of the integrated disclosure system, moved these rules out of various forms and into Item 103 of Regulation S–K, the Commission modified the requirements related to actions involving governmental authorities to allow registrants to omit disclosure of a proceeding if they reasonably believed the action would result in a monetary sanction of less than $100,000. *See* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380]. At the time, the Commission noted that the reason for the revision was to address the problem that disclosure documents were being filled with descriptions of minor infractions that distracted from the other material disclosures included in the document.

(B) Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

(C) A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

*C. Risk Factors*

Item 503(c) of Regulation S–K [46] requires a registrant to provide where appropriate, under the heading "Risk Factors," a discussion of the most significant factors that make an investment in the registrant speculative or risky. Item 503(c) specifies that risk factor disclosure should clearly state the risk and specify how the particular risk affects the particular registrant; registrants should not present risks that could apply to any issuer or any offering.[47]

*D. Management's Discussion and Analysis*

Item 303 of Regulation S–K [48] requires disclosure known as the Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A. The MD&A requirements are intended to satisfy three principal objectives:

- To provide a narrative explanation of a registrant's financial statements that enables investors to see the registrant through the eyes of management;
- To enhance the overall financial disclosure and provide the context within which financial information should be analyzed; and
- To provide information about the quality of, and potential variability of, a registrant's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.[49]

MD&A disclosure should provide material historical and prospective textual disclosure enabling investors to assess the financial condition and results of operations of the registrant, with particular emphasis on the registrant's prospects for the future.[50] Some of this information is itself non-financial in nature, but bears on registrants' financial condition and operating performance.

The Commission has issued several releases providing guidance on MD&A disclosure, including on the general requirements of the item and its application to specific disclosure matters.[51] Over the years, the flexible nature of this requirement has resulted in disclosures that keep pace with the evolving nature of business trends without the need to continuously amend the text of the rule. Nevertheless, we and our staff continue to have to remind registrants, through comments issued in the filing review process, public statements by staff and Commissioners and otherwise, that the disclosure provided in response to this requirement should be clear and communicate to shareholders management's view of the company's financial condition and prospects.[52]

Item 303 includes a broad range of disclosure items that address the registrant's liquidity, capital resources and results of operations. Some of these provisions, such as the requirement to provide tabular disclosure of contractual obligations,[53] clearly specify the disclosure required for compliance. But others instead identify principles and require management to apply the principles in the context of the registrant's particular circumstances. For example, registrants must identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely [54] to have a material effect on financial condition or operating performance. This disclosure should highlight issues that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating performance or of future financial condition.[55] Disclosure decisions concerning trends, demands, commitments, events, and uncertainties generally should involve the:

- Consideration of financial, operational and other information known to the registrant;
- Identification, based on this information, of known trends and uncertainties; and
- Assessment of whether these trends and uncertainties will have, or are reasonably likely to have, a material impact on the registrant's liquidity, capital resources or results of operations.[56]

The Commission has not quantified, in Item 303 or otherwise, a specific future time period that must be considered in assessing the impact of a known trend, event or uncertainty that is reasonably likely to occur. As with any other judgment required by Item 303, the necessary time period will depend on a registrant's particular circumstances and the particular trend, event or uncertainty under consideration. For example, a registrant considering its disclosure obligation with respect to its liquidity needs would have to consider the duration of its known capital requirements and the periods over which cash flows are managed in determining the time period of its disclosure regarding future capital sources.[57] In addition, the time horizon of a known trend, event or uncertainty may be relevant to a registrant's assessment of the materiality of the matter and whether or not the impact is reasonably likely. As with respect to other subjects of disclosure, materiality "with respect to contingent or speculative information or events * * * 'will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.'" [58]

The nature of certain MD&A disclosure requirements places particular importance on a registrant's materiality determinations. The Commission has recognized that the effectiveness of MD&A decreases with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information.[59] Registrants drafting MD&A disclosure should focus on material information and eliminate immaterial information that does not promote understanding of registrants' financial condition, liquidity and capital resources, changes in financial condition and results of operations.[60] While these materiality determinations may limit what is actually disclosed,

[46] 17 CFR 229.503(c).

[47] *Id.*

[48] 17 CFR 229.303.

[49] 2003 Release.

[50] 1989 Release.

[51] *See, e.g.*, the 2003 Release; Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982]; Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746]; Release. No. 33–7558 (Jul. 29, 1998) [63 FR 41394]; and 1989 Release.

[52] *See, e.g.*, speech by Commissioner Cynthia A. Glassman to the Corporate Counsel Institute (Mar. 9, 2006) available at *www.sec.gov/news/speech/spch030906cag.htm*; and speech by Commissioner Elisse B. Walter to the Corporate Counsel Institute (Oct. 2, 2009) available at *www.sec.gov/news/speech/2009/spch100209ebw.htm*.

[53] 17 CFR 229.303(a)(5).

[54] "Reasonably likely" is a lower disclosure standard than "more likely than not." Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746].

[55] 2003 Release.

[56] *Id.*

[57] *Id.* at n.43.

[58] *Basic* at 238, quoting *Texas Gulf Sulfur Co.,* 401 F. 2d 833 (2d Cir. 1968) at 849.

[59] 2003 Release.

[60] *Id.*

they should not limit the information that management considers in making its determinations. Improvements in technology and communications in the last two decades have significantly increased the amount of financial and non-financial information that management has and should evaluate, as well as the speed with which management receives and is able to use information. While this should not necessarily result in increased MD&A disclosure, it does provide more information that may need to be considered in drafting MD&A disclosure. In identifying, discussing and analyzing known material trends and uncertainties, registrants are expected to consider all relevant information even if that information is not required to be disclosed,[61] and, as with any other disclosure judgments, they should consider whether they have sufficient disclosure controls and procedures to process this information.[62]

Analyzing the materiality of known trends, events or uncertainties may be particularly challenging for registrants preparing MD&A disclosure. As the Commission explained in the 1989 Release, when a trend, demand, commitment, event or uncertainty is known, "management must make two assessments:

- Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
- If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur."[63]

Identifying and assessing known material trends and uncertainties generally will require registrants to consider a substantial amount of financial and non-financial information available to them, including information that itself may not be required to be disclosed.[64]

Registrants should address, when material, the difficulties involved in assessing the effect of the amount and timing of uncertain events, and provide an indication of the time periods in which resolution of the uncertainties is anticipated.[65] In accordance with Item 303(a), registrants must also disclose any other information a registrant believes is necessary to an understanding of its financial condition, changes in financial condition and results of operations.

*E. Foreign Private Issuers*

The Securities Act and Exchange Act disclosure obligations of foreign private issuers are governed principally by Form 20–F's[66] disclosure requirements and not those under Regulation S–K. However, most of the disclosure requirements applicable to domestic issuers under Regulation S–K that are most likely to require disclosure related to climate change have parallels under Form 20–F, although some of the requirements are not as prescriptive as the provisions applicable to domestic issuers. For example, the following provisions of Form 20–F may require a foreign private issuer to provide disclosure concerning climate change matters that are material to its business:

- Item 3.D, which requires a foreign private issuer to disclose its material risks;
- Item 4.B.8, which requires a foreign private issuer to describe the material effects of government regulation on its business and to identify the particular regulatory body;
- Item 4.D, which requires a foreign private issuer to describe any environmental issues that may affect the company's utilization of its assets;
- Item 5, which requires management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends that are anticipated to have a material effect on the company's financial condition and results of operations in future periods; and
- Item 8.A.7, which requires a foreign private issuer to provide information on any legal or arbitration proceedings, including governmental proceedings, which may have, or have had in the recent past, significant effects on the company's financial position or profitability.

Forms F–1[67] and F–3,[68] Securities Act registration statement forms for foreign private issuers, also require a foreign private issuer to provide the information, including risk factor disclosure, required under Regulation S–K Item 503.

## IV. Climate Change Related Disclosures

In the previous section we summarized a number of Commission rules and regulations that may be the source of a disclosure obligation for registrants under the federal securities laws. Depending on the facts and circumstances of a particular registrant, each of the items discussed above may require disclosure regarding the impact of climate change. The following topics are some of the ways climate change may trigger disclosure required by these rules and regulations.[69] These topics are examples of climate change related issues that a registrant may need to consider.

*A. Impact of Legislation and Regulation*

As discussed above, there have been significant developments in federal and state legislation and regulation regarding climate change. These developments may trigger disclosure obligations under Commission rules and regulations, such as pursuant to Items 101, 103, 503(c) and 303 of Regulation S–K. With respect to existing federal, state and local provisions which relate to greenhouse gas emissions, Item 101 requires disclosure of any material estimated capital expenditures for environmental control facilities for the remainder of a registrant's current fiscal year and its succeeding fiscal year and

[61] *Id.*

[62] Pursuant to Exchange Act Rules 13a–15 and 15d–15, a company's principal executive officer and principal financial officer must make certifications regarding the maintenance and effectiveness of disclosure controls and procedures. These rules define "disclosure controls and procedures" as those controls and procedures designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is (1) "recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms," and (2) "accumulated and communicated to the company's management * * * as appropriate to allow timely decisions regarding required disclosure." As we have stated before, a company's disclosure controls and procedures should not be limited to disclosure specifically required, but should also ensure timely collection and evaluation of "information potentially subject to [required] disclosure," "information that is relevant to an assessment of the need to disclose developments and risks that pertain to the [company's] businesses," and "information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20." Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276].

[63] 1989 Release.

[64] 2003 Release.

[65] *Id.*

[66] 17 CFR 249.220f.

[67] 17 CFR 239.31.

[68] 17 CFR 239.33.

[69] In addition to the Regulation S–K items discussed in this section, registrants must also consider any financial statement implications of climate change issues in accordance with applicable accounting standards, including Financial Accounting Standards Board ("FASB") Accounting Standards Codification Topic 450, Contingencies, and FASB Accounting Standards Codification Topic 275, Risks and Uncertainties.

for such further periods as the registrant may deem material. Depending on a registrant's particular circumstances, Item 503(c) may require risk factor disclosure regarding existing or pending legislation or regulation that relates to climate change. Registrants should consider specific risks they face as a result of climate change legislation or regulation and avoid generic risk factor disclosure that could apply to any company. For example, registrants that are particularly sensitive to greenhouse gas legislation or regulation, such as registrants in the energy sector, may face significantly different risks from climate change legislation or regulation compared to registrants that currently are reliant on products that emit greenhouse gases, such as registrants in the transportation sector.

Item 303 requires registrants to assess whether any enacted climate change legislation or regulation is reasonably likely to have a material effect on the registrant's financial condition or results of operation.[70] In the case of a known uncertainty, such as pending legislation or regulation, the analysis of whether disclosure is required in MD&A consists of two steps. First, management must evaluate whether the pending legislation or regulation is reasonably likely to be enacted. Unless management determines that it is not reasonably likely to be enacted, it must proceed on the assumption that the legislation or regulation will be enacted. Second, management must determine whether the legislation or regulation, if enacted, is reasonably likely to have a material effect on the registrant, its financial condition or results of operations. Unless management determines that a material effect is not reasonably likely,[71] MD&A disclosure is required.[72] In addition to disclosing the potential effect of pending legislation or regulation, the registrant would also have to consider disclosure, if material, of the difficulties involved in assessing the timing and effect of the pending legislation or regulation.[73]

A registrant should not limit its evaluation of disclosure of a proposed law only to negative consequences. Changes in the law or in the business practices of some registrants in response to the law may provide new opportunities for registrants. For example, if a "cap and trade" type system is put in place, registrants may be able to profit from the sale of allowances if their emissions levels end up being below their emissions allotment. Likewise, those who are not covered by statutory emissions caps may be able to profit by selling offset credits they may qualify for under new legislation.

Examples of possible consequences of pending legislation and regulation related to climate change include:

- Costs to purchase, or profits from sales of, allowances or credits under a "cap and trade" system;
- Costs required to improve facilities and equipment to reduce emissions in order to comply with regulatory limits or to mitigate the financial consequences of a "cap and trade" regime; and
- Changes to profit or loss arising from increased or decreased demand for goods and services produced by the registrant arising directly from legislation or regulation, and indirectly from changes in costs of goods sold.

We reiterate that climate change regulation is a rapidly developing area. Registrants need to regularly assess their potential disclosure obligations given new developments.

*B. International Accord*

Registrants also should consider, and disclose when material, the impact on their business of treaties or international accords relating to climate change. We already have noted the Kyoto Protocol, the EU ETS and other international activities in connection with climate change remediation. The potential sources of disclosure obligations related to international accords are the same as those discussed above for U.S. climate change regulation. Registrants whose businesses are reasonably likely to be affected by such agreements should monitor the progress of any potential agreements and consider the possible impact in satisfying their disclosure obligations based on the MD&A and materiality principles previously outlined.

*C. Indirect Consequences of Regulation or Business Trends*

Legal, technological, political and scientific developments regarding climate change may create new opportunities or risks for registrants. These developments may create demand for new products or services, or decrease demand for existing products or services. For example, possible indirect consequences or opportunities may include:

- Decreased demand for goods that produce significant greenhouse gas emissions;
- Increased demand for goods that result in lower emissions than competing products;[74]
- Increased competition to develop innovative new products;
- Increased demand for generation and transmission of energy from alternative energy sources; and
- Decreased demand for services related to carbon based energy sources, such as drilling services or equipment maintenance services.

These business trends or risks may be required to be disclosed as risk factors or in MD&A. In some cases, these developments could have a significant enough impact on a registrant's business that disclosure may be required in its business description under Item 101. For example, a registrant that plans to reposition itself to take advantage of potential opportunities, such as through material acquisitions of plants or equipment, may be required by Item 101(a)(1) to disclose this shift in plan of operation. Registrants should consider their own particular facts and circumstances in evaluating the materiality of these opportunities and obligations.

Another example of a potential indirect risk from climate change that would need to be considered for risk factor disclosure is the impact on a registrant's reputation. Depending on the nature of a registrant's business and its sensitivity to public opinion, a registrant may have to consider whether the public's perception of any publicly available data relating to its greenhouse gas emissions could expose it to potential adverse consequences to its business operations or financial condition resulting from reputational damage.

*D. Physical Impacts of Climate Change*

Significant physical effects of climate change, such as effects on the severity of weather (for example, floods or hurricanes), sea levels, the arability of farmland, and water availability and

[70] *See* 1989 Release.

[71] Management should ensure that it has sufficient information regarding the registrant's greenhouse gas emissions and other operational matters to evaluate the likelihood of a material effect arising from the subject legislation or regulation. *See* n. 62, *supra.*

[72] In 2003 we issued additional guidance with respect to how registrants could improve MD&A disclosure, including ideas about how to focus on material issues and how to present information in a more effective manner to be of more value to investors. *See* 2003 Release.

[73] *See* 2003 Release for a discussion of how companies should address, where material, the difficulties involved in assessing the effect of the amount and timing of uncertain events.

[74] For example, recent legislation will ultimately phase out most traditional incandescent light bulbs. This has resulted in the acceleration of the development and marketing of compact fluorescent light bulbs. *See* Energy Independence and Security Act of 2007, Public Law 110–140, 121 Stat. 1492 (2007).

quality,[75] have the potential to affect a registrant's operations and results. For example, severe weather can cause catastrophic harm to physical plants and facilities and can disrupt manufacturing and distribution processes. A 2007 Government Accountability Office report states that 88% of all property losses paid by insurers between 1980 and 2005 were weather-related.[76] As noted in the GAO report, severe weather can have a devastating effect on the financial condition of affected businesses. The GAO report cites a number of sources to support the view that severe weather scenarios will increase as a result of climate change brought on by an overabundance of greenhouse gases.

Possible consequences of severe weather could include:

- For registrants with operations concentrated on coastlines, property damage and disruptions to operations, including manufacturing operations or the transport of manufactured products;
- Indirect financial and operational impacts from disruptions to the operations of major customers or suppliers from severe weather, such as hurricanes or floods;
- Increased insurance claims and liabilities for insurance and reinsurance companies ;[77]
- Decreased agricultural production capacity in areas affected by drought or other weather-related changes; and
- Increased insurance premiums and deductibles, or a decrease in the availability of coverage, for registrants with plants or operations in areas subject to severe weather.

Registrants whose businesses may be vulnerable to severe weather or climate related events should consider disclosing material risks of, or consequences from, such events in their publicly filed disclosure documents.

## V. Conclusion

This interpretive release is intended to remind companies of their obligations under existing federal securities laws and regulations to consider climate change and its consequences as they prepare disclosure documents to be filed with us and provided to investors. We will monitor the impact of this interpretive release on company filings as part of our ongoing disclosure review program. In addition, the Commission's Investor Advisory Committee[78] is considering climate change disclosure issues as part of its overall mandate to provide advice and recommendations to the Commission, and the Commission is planning to hold a public roundtable on disclosure regarding climate change matters in the spring of 2010. We will consider our experience with the disclosure review program together with any advice or recommendations made to us by the Investor Advisory Committee and information gained through the planned roundtable as we determine whether further guidance or rulemaking relating to climate change disclosure is necessary or appropriate in the public interest or for the protection of investors.

## VI. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated by adding new Section 501.15, captioned "Climate change related disclosures," and under that caption including the text in Sections III and IV of this release.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register**/Code of Federal Regulations.

### List of Subjects

*17 CFR Part 211*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 231 and 241*

Securities.

### Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as set forth below:

## PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. Part 211, Subpart A, is amended by adding Release No. FR–82 and the release date of February 2, 2010 to the list of interpretive releases.

## PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 2. Part 231 is amended by adding Release No. 33–9106 and the release date of February 2, 2010 to the list of interpretive releases.

## PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–61469 and the release date of February 2, 2010 to the list of interpretive releases.

By the Commission.

Dated: February 2, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–2602 Filed 2–5–10; 8:45 am]

**BILLING CODE 8011–01–P**

[75] *See* "Climate Change: Financial Risks to Federal and Private Insurers in Coming Decades Are Potentially Significant: U.S. Government Accountability Office Report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate," GAO–07–285 (March 2007).

[76] *Id.* at p.17.

[77] Many insurers already have plans in place to address the increased risks that may arise as a result of climate change, with many reducing their near-term catastrophic exposure in both reinsurance and primary insurance coverage along the Gulf Coast and the eastern seaboard. *Id.* at 32.

[78] The Investor Advisory Committee was formed on June 3, 2009 to advise the Commission on matters of concern to investors in the securities markets, provide the Commission with investors' perspectives on current, non-enforcement, regulatory issues and serve as a source of information and recommendations to the Commission regarding the Commission's regulatory programs from the point of view of investors. *See* Press Release No. 2009–126, "SEC Announces Creation of Investor Advisory Committee," available at *http://www.sec.gov/news/press/2009/2009-126.htm.*

# Reader Aids

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**H.R. 1817/P.L. 111–128**

To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the ''John S. Wilder Post Office Building''. (Jan. 29, 2010; 123 Stat. 3487)

**H.R. 2877/P.L. 111–129**

To designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the ''1st Lieutenant Louis Allen Post Office''. (Jan. 29, 2010; 123 Stat. 3488)

**H.R. 3072/P.L. 111–130**

To designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the ''Coach Jodie Bailey Post Office Building''. (Jan. 29, 2010; 123 Stat. 3489)

**H.R. 3319/P.L. 111–131**

To designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the ''Army Specialist Jeremiah Paul McCleery Post Office Building''. (Jan. 29, 2010; 123 Stat. 3490)

**H.R. 3539/P.L. 111–132**

To designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the ''Patricia D. McGinty-Juhl Post Office Building''. (Jan. 29, 2010; 123 Stat. 3491)

**H.R. 3667/P.L. 111–133**

To designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the ''Clyde L. Hillhouse Post Office Building''. (Jan. 29, 2010; 123 Stat. 3492)

**H.R. 3767/P.L. 111–134**

To designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the ''W. Hazen Hillyard Post Office Building''. (Jan. 29, 2010; 123 Stat. 3493)

**H.R. 3788/P.L. 111–135**

To designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the ''Corporal Joseph A. Tomci Post Office Building''. (Jan. 29, 2010; 123 Stat. 3494)

**H.R. 1377/P.L. 111–137**

To amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes. (Feb. 1, 2010; 123 Stat. 3495)

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**H.R. 4508/P.L. 111–136**

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 29, 2010; 124 Stat. 6; 1 page)

**S. 692/P.L. 111–138**

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances. (Feb. 1, 2010; 124 Stat. 7; 1 page)

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